S. Dhanarajan

v.

The Member Secretary, Tamil Nadu Pollution Control Board & Ors.

Application No.150/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Tree felling
Decision: Disposed
Date: 4 January, 2016

JUDGMENT

The applicant, a resident of Nilavarapatti Village, filed this application on behalf of the villagers for a direction against the respondents to protect 500 Palmyra trees/other trees/standing crops/ and to drop the High Tension Cable Sub-Station project for generating power supply in the disputed area and choose alternative land for the same.

It was alleged by the 9th respondent that only 40 Palmyra trees would be cut for the project and that the project was required for public purpose due to persistent power cut in the disputed area. He also ensured that environmental safeguards would be taken care of and that the project would not raise any ecological issues in the village further ensuring planting of 10 trees for every Palmyra tree cut. The applicant, however, submitted that the project should be allowed to continue only if the revenue authorities were satisfied that no other alternative place would be suitable for the same.

Having heard both sides, the Tribunal directed the revenue authorities to consider the representation of the applicant and decide on the suitability of the place in order to permit or restrict the respondents from pursuing the project. Accordingly, the application was disposed of, with directions to be adhered to within two weeks from the date, the representation was forwarded to the District Collector for consideration.

Heera Kerala Developers Pvt. Ltd.
v.
Kerala Coastal Zone Management Authority
Application No. 210/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: CRZ Clearance, Backwaters
Decision: Disposed
Date: 4 January, 2016

JUDGMENT

This application was filed for CRZ clearance for a residential project in the extent of 3.14 hectares in Attipra village in Kerala considering that the project lay adjacent to the Veli Kayal backwaters. The respondents had submitted that some portions of the land were reclaimed and were to be restored without any construction activity being carried on it. These claims were based on a report from the Centre of Earth Studies, Thiruvananthapuram.

Subsequently, a fresh application was made seeking directions against the respondent to consider the application for CRZ clearance based on the report of an accredited agency of the Government of India, Institute of Remote Sensing, Anna University. The applicant stated that no other sub group could be appointed for considering the CRZ clearance except any one of the accredited agents, which was the view taken by the Tribunal in *Fairlog vs. Kerala Coastal Zone Management Authority.*

The respondent submitted that they would consider the application for CRZ clearance if sufficient time was given. Accordingly, the application was disposed of by the Tribunal with the direction to the respondent to place the said application in the next meeting of the CRZ committee and to consider the applicant's application for CRZ clearance based on the report of the accredited agency.

Accordingly, the application was disposed of.

M. Manibalan
v.
The Union of India & Ors
Review Application No.20/2015
In
Application No.47/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Review
Decision: Dismissed
Date: 4 January, 2016

JUDGMENT

This review application was submitted for review, preferred against an order passed on 29.10.2015 by the Hon'ble Tribunal, in respect of the finding of the Tribunal that the impugned notification could not be raised in the application.

The applicant had put forth the construction of Clause 9 of the Environment Impact Assessment ('EIA') Notification, 2006 as an error apparent wherein the validity period of EC and the general condition requiring six-monthly monitoring report was considered and analyzed in detail. The Hon'ble Tribunal also held that there had been no substantial evidence to infer the issue of the red category industry as well as the number of trees alleged to have been cut. Accordingly, the review application was rejected on the basis that no error was apparent on the face of the record and no new issues had been raised by the applicant.

Accordingly, the application was dismissed on circulation.

M/s. Sri City Pvt. Ltd.
v.
M. Manibalan & Ors.
Review Application No.21/2015
In Application No.47/2015
&
M.A No.124 & 149 of 2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Review
Decision: Dismissed
Date:4 January, 2016

JUDGMENT

This was a review application filed against an earlier order of the Hon'ble Tribunal dated 29.10.2015, preferred by one of the respondents in the main application. The applicant was the aggrieved party in respect of the direction given in the order preferred in this review application. The review related to the direction No.2 and 4 in the original order and the Tribunal had ordered that the review applicant would not cut any further trees in the SEZ area. The Tribunal, affirming that there was no error apparent on the face of record, dismissed the review application.

P.Abdul Azeez
v.
The District Collector & Ors
Application No.60/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Crushing Unit, Noise Pollution, Air Pollution, Health Hazards
Decision: Dismissed
Date:5 January, 2016

JUDGMENT

This application had been filed against the crushing unit operated by the Kanneth Industries ('11th respondent'). Objections had been raised regarding the functioning of the crushing unit of 11th respondent in the Malappuram District and since 2011, the applicant raised objections on the ground that the sound emanated from the crushing unit was beyond tolerable and the dust from the unit caused pollution and health problems in the surrounding area.

The application sought for an order to restrain the 11th respondent from conducting the said unit and the Kerala State Pollution Control Board renewed the consent to operate, finding it to be valid up to 31.12.2016. The Tribunal was of the view that since the unit was operating with valid consent granted by the Board, the prayer sought for in the current application could not be granted.

Accordingly, the application was dismissed with liberty to the applicant to approach the Appellate Authority if he was aggrieved by the consent granted by the Board.

Friends of Nature Charitable Society
v.
State of Kerala & Ors.
Application No. 438/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Land Acquisition, Environment Clearance
Decision: Dismissed
Date: 5 January 2016

JUDGMENT

The applicant had initially filed this application as a writ of mandamus before the High Court of Kerala restraining the State of Kerala and the Airport Authority of India from proceeding with the proposed acquisition of land as well as a writ of mandamus directing the State of Kerala to appoint a Committee of Experts to study the impact on the environment due to proposed construction and development of Calicut International Airport. The applicant also sought another writ against the Airport Authority of India to ensure that the airport was complying with pollution control laws and that the official respondents including the Ministry of Environment, Forests and Climate Change ('MoEFCC') dispose of the representation made to them within the time period.

It was admitted by the applicants that the land acquisition was not within the jurisdiction of the Hon'ble Tribunal and that land acquisition proceeding had not commenced, thereby making the first prayer premature. With regard to the prayer relating to a committee of experts, the said prayer was declared premature by the Tribunal and the applicant was invited to agitate the proposed construction during the public consultation process.

Therefore, the Hon'ble Tribunal held that only the MoEFCC could consider whenever there was a violation of conditions imposed while granting the Environment Clearance ('EC') and the Airport Authority of India could not consider representation made by the applicant. The application was hence dismissed with directions permitting the applicant to approach the appropriate authority in case of any violation of conditions in respect of the EC already granted.

Accordingly, the application was dismissed.

K.M. Aliyar & Ors
v.
Kothamangalam Municipality & Ors
Application No. 291/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Environmental Pollution
Decision: Disposed
Date: 5 January, 2016

JUDGMENT

An application, which was initially filed in the Kerala High Court ('HC') and transferred to the Hon'ble Tribunal, was filed again subsequent to orders already passed by the Tribunal, against the pollution caused by the Palappillil Specified Block Rubbers Pvt. Ltd ('4th respondent') running in Kothamanglam, Ernakulam district, wherein the issue had been raised for a declaration that the functioning of the factory was illegal and violative of Article 21 of the Constitution of India, as it was causing air, water and noise pollution and the unit was functioning without a valid license. The HC had dismissed the application as it was unable to find any apprehension of pollution.

The Hon'ble Tribunal observed, on the basis of the earlier order given on 16.11.2015, that if the permissible limit was exceeded, it would be open to the applicant to raise an objection and the Kerala State Pollution Control Board ('the Board') would take all necessary steps in the manner known to law. However, the Tribunal observed that as ordered earlier, the recommendations of the Board should be directed to be complied with by the 4th respondent, in the interests of protecting the environment.

Accordingly, the application was disposed of.

M.K Babu & Anr
Application No. 415/2013

M/s. A-One Sands Pvt. Ltd. & Ors
Application No.418/2013

O.C. Sadanandan & Anr
Application No.59/2014

M/s. Mukkam Granites & Anr
Application No.60/2014

M/s. Kuttiady Jelly Making Industries & Anr
Application No.61/2014
v.
Government of India (MoEF) & Ors
And
N.A. Thomas
v.
Government of India (MoEF) & Ors
Application No.264/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Granite Quarrying, Mining
Decision: Dismissed
Date: 5 January, 2016

JUDGMENT

In these applications, the permit holders of granite quarry of building stones challenged the statutory notification issued by the MoEF under Section 5 of the Environment (Protection) Act, 1986 which prohibited activities including mining and sand mining in the area concerned which was categorized as Ecologically Sensitive Area ('ESA'). The applicants submitted that these directions did not apply to the village concerned in the applications as it was not covered under the ESA as per the resolutions of the Panchayat. The respondents however, contended that upon invoking powers under Section 5 of the Environment (Protection) Act, 1986, once the Government of India issues directions, they assume statutory character and their validity cannot be questioned by the Tribunal.

On perusal of the pleadings, the Hon'ble Tribunal held that it did not have the jurisdiction to entertain the matter and agreed that any application filed under section 14 of the NGT Act should not only relate to any of the Acts contemplated under Schedule I but must also raise a substantial question relating to the environment and on the factual matrix of this

case, the alleged right of the applicant to have a quarry permit or lease could not be construed as a right pertaining to the environment.

As a result, the application was dismissed with liberty to the applicant to work out any other legal remedy in a manner known to law.

P.N. Anoop
v.
The Union of India & Ors
M.A. No. 216/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Sri P.S. Rao
Keywords: Limitation, Environment Clearance
Decision: Dismissed
Date:6 January, 2016

JUDGMENT

The application was filed for condonation of delay in filing the appeal in which the applicant had challenged the grant of Environment Clearance ('EC') for the proposed Petrochemical Project of Bharat Petroleum Company in the Ernakulam District of Kerala. According to the applicant, the project fell under Category A as per the Environment Impact Assessment ('EIA') Notification, 2006 and that had not been communicated according to the law and hence, the period of limitation had not been triggered. He stated that he had been aware of the granting of EC on 16.05.2015 and that only the factum of granting EC was published as opposed to the entire order that is required to be published; the EC was also uploaded under the wrong heading on the Ministry's website.

However, the appeal was filed in 13.08.2015, which fell within the 90 days period for which the Tribunal was empowered to condone the delay under Section 16 of the National Green Tribunal ('NGT') Act, 2010. The applicant stated that the delay had occurred due to the *bona fide* reasons of the applicant of having to gather information from various sources to file the appeal and was also required to translate a number of documents into English from the vernacular language, both of which are time consuming.

The respondent contended that the EC was granted on 12.05.2015 and was kept on the website on that date itself. Therefore, the 90 days period expired on 10.08.2015 whereas the appeal was filed on 13.08.2015 with a delay of 92 days. In his reply, the applicant stated that the newspaper publication regarding the grant of EC on 12.05.2015 did not amount to communication, as it was only the factum that was published.

The Tribunal considered all the submissions stated that it was not disputed that the EC had already been displayed on the Ministry of Environment and Forests ('MoEF') website on the date of granting the EC itself and therefore, that date should be reckoned as the date of communication thereby making it a 92 day period which was well beyond the grace period of 90 days. It also stated that the display of the EC under a wrong heading was not a strong argument as the display itself was an undisputed fact and the clerical error could not be deemed as an excuse to file the appeal with delay; here, the date of display on the website was the point to be considered.

Accordingly, the application was dismissed being devoid of any merits, without any order as to costs.

M. Shenbagakani
v.
The Commissioner & Ors
Application No. 1/2016 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Sri P.S. Rao
Keywords: Noise Pollution, Air Pollution
Decision: Dismissed
Date: 6 January, 2016

JUDGMENT

The applicant had rented out his commercial property to the 4th respondent to run a carpenter shop with the condition to not use any heavy machinery. However, the 4th respondent did not comply with the agreement thereby leading to a lot of noise and dust pollution due to the machinery; this not only degraded the environment but also affected the health of nearby residents within the vicinity of the shop. The applicant had sought directions to restrict the 4th respondent from running the shop without a license and valid consent as well as instruct the 2nd and 3rd respondents to take necessary action against the 4th respondent for violating the noise and dust pollution laws.

The Tribunal was of the view that the application was premature, as no averments in the application had evidenced that representation was made to any authorities of the Tamil Nadu State Pollution Control Board ventilating the grievances of the applicant. Hence, the Tribunal felt it fit to dispose of the application with the liberty to the applicant to approach the concerned District Environmental Engineer of the Board on the alleged complaint. Liberty was also granted to the applicant to approach the Tribunal if necessary action was not taken by the concerned DEE.

Accordingly, the application was disposed of.

Shri Kamalkant Y. Redkar & Anr.
Vs.
State of Goa & Ors.

Application No. 110/2014 (WZ)

Coram: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Coastal Regulation Zone, Delegation of power
Decision: Allowed
Date: 8th January 2016

JUDGMENT

The application was filed challenging the communication/permission given by the Member Secretary, Goa Coastal Zone Management Authority ["GCZMA"] on 30th July 2014 for the reconstruction of a house in Survey No.362/11 in village Anjuna, Taluq Bardez-Goa. The preliminary contention of the applicants was that the respondent had initially obtained permission from GCZMA for the said reconstruction in the year 2012 in terms of CRZ Notification, 2011. However, they again approached the authority for amendment/change in the original permission which was approved by the Member Secretary vide the impugned communication which was purportedly a NOC without any appraisal and approval of GCZMA. Thus, the applicants argued that the said communication/NOC for the change in the original permission was *non-est* for being granted without any consideration of the GCZMA and without any powers vested with the Member Secretary.

The applicants also pointed out that the property in question fell within the NDZ under CRZ-III as it was within 100 meters of the high tide line wherein no new construction was permitted. Thus, in order to facilitate the new construction, the respondents had obtained permission for the amalgamation of the two survey numbers by misrepresentation and by circumventing the procedure, using it as a trick to secure permission.

In reply to the application, the Member Secretary failed to contradict the preliminary contention raised by the applicants. The Tribunal noted that it was a well settled principle that unless specifically countered or denied, the grounds and the allegations made in the Application are deemed to be accepted. After referring other documents on records, the Tribunal opined that the communication dated 30.07.2014 was issued without any delegation of authority or any approval/appraisal done by GCZMA. The private respondent pointed out that though he had received the permission/NOC but he had not carried out any reconstruction/ modification of the existing structure. In view of these facts, the Tribunal found it fit to remand the matter back to the GCZMA for its re-consideration in terms of relevant facts and CRZ regulations within a period of 4 weeks and till such time, the impugned communication was kept in abeyance.

Accordingly, the application was disposed of with no order as to costs.

Rohit Prajapati & Anr.
Vs.
Union of India & Ors.

Application No. 66 (THC) of 2015 (WZ)

Coram: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: EIA, Public Hearing, Ex-post facto Clearance, Polluter Pays Principle
Decision: Allowed
Date: 8 January 2016

JUDGMENT

This application was originally filed before the Hon'ble High Court of Gujarat thereafter which the application was transferred to the Tribunal by order dated 21/04/2015. The main grievance in this application was against permission granted by the authorities to Respondent Nos. 6 to 9 without following the required procedure under the EIA Notification, 1994. The applicants contended that the Respondents Nos. 6 to 9 failed to give copies of the EIA Notification before commencement of process of scrutiny and that the public hearing for all these projects was held subsequent to commissioning of the industrial plant. Respondent No. 6 was a pesticide company and Respondent Nos. 7 to 9 dealt in production of drugs of various kinds. The applicants contended that production of bulk drugs and pesticides would have adverse impact on environment and therefore it needed prior approval from authorities. The applicants also contended that the affected villagers were required to be heard before sanctioning of these industrial activities, as public hearing was an essential part under the 1994 Notification. Consequently, in May 2013, a public hearing was arranged by MoEF for the grant of *ex-post facto* permissions to these respondents for industrial activity. The MoEF issued a Circular dated 14/05/2002 for such ex-post facto hearing and also allowed issuance of fresh notices to other defaulting units who had not applied earlier for Environment Clearance (EC) to apply for EC on or before 31/03/2003. The applicant contended that this step was taken by MoEF to circumvent provisions of environmental laws and regularize the illegal activities of Respondent No. 6 to 9 and some other industries which were allowed to be operated without EC. The applicants sought directions to Government authorities to revoke and rescind the circular issued on 14/05/2002, cancel the ECs granted to defaulting industries and to restore environmental degradation caused by Respondent nos. 6 to 9. The applicants also urged that Respondents No. 1 to 4 should not be allowed to grant any further ex-post facto EC to any industry under the EIA regulations.

The Tribunal noted that the pleadings were complete in the Hon'ble High Court and in spite of serious attempt by the Tribunal to call upon the Respondents only Respondent No. 1 and 6 to 9 appeared. Subsequently the Tribunal was informed by the contesting Respondents that whatever was stated in their reply affidavits be treated as arguments on their behalf. Considering the pleadings, the common contention of the Respondents 6

to 9 was that NOC was granted much before 1994 and the EIA Notification 1994 was not required to be followed because their industries were in operation much before 1994. It was further contended by the Respondents that in spite of all the compliances they had again followed directions given in the Circular dated 14/05/2002 based on which ECs was granted to them and the impugned ECs cannot be challenged after such a long time. The respondents denied all allegations and stated that their permissions were legal, valid and proper. Accordingly, they sought dismissal of the application.

The Tribunal examined the pleadings and replies of both the parties and observed that the main thrust of the EIA notification was to allow the public to participate in the decision making during the pendency of the EC application. The Tribunal opined that the public members should be made aware of the industrial activity, probable pollution potential of industries and for such reason at least rapid EIA should be provided to them which was not done in the present case. The Tribunal noted that the public hearing was held in a hotel and in another case in Gram-Vikas Kendra. Further, the Tribunal noted that since the Circular dated 14/05/2002 was an internal communication between the MoEF and other authorities made it clear that such Circular cannot override the provisions of the Environmental Protection Act, 1986 (EPA). The Tribunal noted that the Circular did not show by which provisions the power was provided in the EPA to grant ex-post facto EC and consequently opined that the Circular was void *ab-initio* and should be struck down. Therefore, the Tribunal noted that ex-post facto process of obtaining ECs by the Respondent Nos. 6 to 9 was just a farce and staged managed which was impermissible under the law and was incurable in any manner. The Tribunal also delved into the issue of limitation and inferred with the help of different precedents that the cause of action would continue as it was in Special Civil Application before the High Court.

After due consideration the Tribunal opined that the application succeeded on all counts and directed that the 2002 Circular was void, illegal and inoperative. Thus, it directed the MoEF and the State authorities not to grant any consent to run any industrial activity which requires permission under the EIA Notification, 2006 without going through the requisite steps of screening, scoping, public hearing etc. The Respondent Nos. 1 to 5 were directed to revoke ECs granted to Respondent Nos. 6 to 9 within a period of one month. Further, the Tribunal instructed the Respondent Nos. 6 to 9 to close industrial activities which were being operated without a valid EC and also pay a fine of Rs. 10 lakhs for causing environmental degradation which was to be utilized for restoration of the environment and plantation purposes and in case of failure to pay such amount, the concerned collector of district was directed to confiscate the industries and goods, stock and barrel. Finally, the Tribunal directed Respondent Nos. 6 to 9 to pay Rs. 10,000 each to the applicants as litigation costs.

Accordingly, the application was allowed with order as to costs.

M/s. Nanu Estates Pvt. Ltd.
Vs.
Mr. Sayed Tayeeb & Ors.

MA No. 209/2015
In
Application No. 22/2015 (WZ)

Coram: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Limitation, Maintainability
Decision: MA allowed, OA dismissed
Date: 8th January 2016

JUDGMENT

The original application was with regard to illegal hill cutting by the Senior Town Planner, Goa, Respondent no. 7, (Applicant in the present M.A.), which resulted in change in the natural drainage pattern and increase in instances of hill slop instability and landslides, thereby adversely affecting the environment. The original application was filed with prayers to direct the respondent authorities to initiate action against the respondent no. 7 for hill cutting without the necessary permission, to examine and undertake a study of the extent to which the hill cutting had been effected, to cancel all permissions, NOCs, clearances and approvals granted to respondent no. 7 and to collectively form a vigilance squad to curb and stop encroachment and other such activities on hill tops and hill slopes in Goa and everywhere in India in general.

In response to the Original Application, the Applicant filed the present Miscellaneous Application raising certain preliminary objections and submitted that a similar petition was filed by the original applicants in the High Court of Bombay at Goa in which no interim relief was granted and the High Court observed that the hill cutting was within the permissible limits. Further, it was the case of the applicant that the original application was barred by limitation under section 14 (3) of the NGT Act as the original applicant had approached the Tribunal nearly 10 months after the Hon'ble High Court had granted leave to avail alternative remedy. The application was also opposed on the grounds of jurisdiction for not having any cause of action under any statute mentioned in Schedule I of the NGT Act.

The Tribunal noted that the Hon'ble High Court granted leave to withdraw the petition on 17.07.2014 and the original application was filed before the Tribunal on 18.02.2015 which was beyond the period of limitation as mentioned under Section 14(3) of the NGT Act. Further, the Tribunal opined that Section 15 of the NGT Act was not attracted as the original application did not seek compensation or restitution/restoration of environment. Also on perusal of the prayers made in the original application, it illustrated that intervention of the Tribunal had been sought against the permission granted under

the provisions of the Goa Town and Planning Act which was not listed under Schedule I appended to the NGT Act. Therefore, the Tribunal could not proceed with the original application as the aforementioned regulation was outside the scope of provisions of NGT Act. Resultantly, the Misc. Application succeeded on both counts i.e. delay in filing of the original application beyond the stipulated period and raising issues which were not related to the enactment listed in the Act.

Accordingly, the Misc. Application was allowed and the original application was dismissed as barred by limitation with no order as to costs.

Mr. Jayant Baregar
Vs.
State of Maharashtra & Ors.

Application No. 11/2015 (WZ)

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Tree felling, Precautionary Principle, Eco-sensitive Area
Decision: Disposed
Date: 8th January 2016

JUDGMENT

The present application raised several issues related to illegal cutting down of trees in Sindhudurg District and non-compliance with the concerned laws and rules. The applicant alleged that the illegal cutting of trees raised a substantial question of law relating to environment and also involved restitution of the environment and compensation to commensurate the damage done to ecology. According to the applicant, the large scale cutting of trees was carried out with the help of certain forest officials and the Maharashtra Felling of Trees (Regulation) Act of 1964 ('The Tree Act') was not followed in the strict sense and despite the fact that departmental inquiry had been carried out, the officials had taken a long time to conclude its proceedings. The applicant alleged that such tree cutting was causing damage to the local eco system and bio-diversity of the district which was covered under the eco-sensitive zone by the Notification of Government of India and was also part of the Gadgil report on Western Ghats and prayed for relief accordingly.

In response to the application the Respondents submitted that the provisions of the Tree Act was followed under which the Tree officer was given the authority to take necessary action against the perpetrators. It was further submitted that to stop the illegal felling of trees, recourse was also taken from the provisions of Maharashtra Land Revenue Code, 1966 ('Land Revenue Code') and Maharashtra Land Revenue (Regulation of Right to Cut Trees) Rules, 1967. It was also contended that tree felling was not a banned activity but was heavily regulated by the existing rules regarding the same. It was submitted by Respondent No. 5, 6 & 7 that the Applicant did not have locus standi and the application was time barred.

There were three issues that the Tribunal considered in the Application. First, whether the application was not maintainable on grounds of limitation and jurisdiction? Second, whether the illegal tree cutting had been established on record? Third, whether any directions had to be passed on the basis of precautionary principle?

The Tribunal opined that it cannot enter into the implementation of the Tree Act and the Land Revenue Code along with the Rules as these regulations are not listed under

Schedule-I of the National Green Tribunal Act, 2010. However, the Tribunal granted liberty to the applicant to invoke writ jurisdiction of the High Court for enforcement of the above mentioned regulations and for initiating administrative action against the defaulting authorities. The Tribunal also noted that illegal deforestation would undoubtedly impair the environment and to ensure the preservation of the same it passed directions, applying the precautionary principle as mentioned under Section 20 of the NGT Act, to the Department of Revenue and Forest to issue instructions to the concerned officials to strictly enforce the existing Regulations related to cutting of trees and the Department may issue comprehensive guidelines reiterating the existing provisions.

Accordingly, the application was disposed of with no order as to costs.

Hazira Macchimar Samiti & Ors.
Vs.
Union of India & Ors.

Appeal No. 79/2013 (WZ)

Coram: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Hazira Port, Environment Clearance, Coastal Regulation Zone, Mangroves, Ecologically Sensitive Zone, Hazardous Chemicals, Restoration
Decision: Allowed
Date: 8th January 2016

JUDGMENT

This appeal challenged the Environmental Clearance ('EC') granted by the MoEF on 3rd May, 2013 for further development of port activities at Hajira, Surat. The chief contention of the appellants, the fishermen folks in the concerned area was that the development of port activities would hinder appropriate, safe and proper access to seawater for the traditional fishermen of village Hajira, to undertake fishing in inter-tidal zone. They further alleged that the Adani-Hajaria Port Pvt. Ltd. ('AHPPL') had already caused massive destruction to mangroves in order to construct port berths as well as for the purpose of reclamation of land in the area for which the EC had been granted. The appellants had also submitted that the said activities had already commenced by AHPPL prior to transfer of the EC and CRZ clearances in favour of M/s Hazira Infrastructure Private Ltd ('HIPL') and the impugned EC was granted "Ex-post facto" on the basis of Office Memorandum dated 03.11.2009 of MoEF which prevented the affected people from raising their concerns with respect to the adverse impacts of the project. It was further stated that the project was impacting the vulture feeding site which observed presence of critically endangered species of vultures namely the white backed and long billed vultures. However, the said issues were blatantly ignored while granting EC. It was further alleged that the impugned EC had been granted by the MoEF without verification of compliances of conditions stipulated in the CRZ/EC clearance granted in June 2003 and for such reason it should be quashed alongwith payment of restoration costs for the environmental damage caused to the area.

The AHPPL resisted the appeal and contended that the mangroves had not been destructed in the process of port development. They also denied that access to the traditional boats of the Appellants would be closed due to port activities and further stated that no damage had been caused to the environment in the relevant area. It was further contended that the EC was granted only after due consideration of the EIA report and available material and that the representation made by the appellant was considered before the EC was granted.

The Tribunal after deliberating on the material and arguments presented framed three issues for the determination of this appeal. First, whether the EC suffered from illegality or irregularities, which made it liable to be quashed? Second, whether it was necessary to direct the respondents to pay restoration costs or costs for damages for destruction of mangroves due to expansion of the port? Third, whether the creek at the mouth of the Port area of Hazira was narrowed down due to port activities which impeded fishing activities, leading to financial loss to the appellants?

The Tribunal after considering the material on record was of the view that the MoEF had taken a casual view while granting the EC and had not carried out the compliance monitoring or even delineated the project activities as per 2003 and 2013 EC. The Tribunal came across a communication between AHPPL and MoEF, the perusal of which showed that there was a necessity of re-alignment of existing pipeline and railway line which required a separate clearance. However, there was nothing on record to establish if public consultation was held in respect of the impacts of the said re-alignment or the same were evaluated or assessed by the MoEF. Further there were no reasons provided for reduction in the mangrove afforestation. Placing reliance upon the maps, the Tribunal found that the port activities had resulted into destruction of mangroves and narrowing down of the creek which made it evident that the expansion activities had already taken place without obtaining EC and CRZ clearances. It was further observed by the Tribunal that the EAC recommended the project for EC without verifying the aspects of impacts on the marine water. In addition to other irregularities, the Tribunal pointed that as hazardous products were likely to be brought to the port, therefore as per the Hazardous Chemical (Storage & Handling) Rules, 2000 'consent to establish' was required from the Pollution Control Board which was not considered by the MoEF while granting the impugned EC. Further, the MoEF failed to produce any records which could show the compliance monitoring of the previous EC before granting the impugned EC for expansion of the project.

In view of the said considerations, the Tribunal held the impugned EC illegal and set aside the same holding the respondent No. 6 & 7 liable to pay Rs 25 crore as an amount of penalty for restoration and also restrained them from closing/narrowing down the mouth of the creek or narrowing down access of the boats of traditional fishermen through mouth of the creek. The Tribunal further directed the said respondents to pay an additional amount of Rs. 2 lakh each to the appellants as costs of litigation.

Accordingly, the appeal was allowed.

Shri K.N Somasekhar

v.

The State of Karnataka & Ors

R.A. No. 08/2015 in Application No. 303/2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Sri P.S. Rao
Keywords: Limitation
Decision: Dismissed
Date:8 January, 2016

JUDGMENT

This application was filed seeking a review of an order of dismissal recording that the application initially filed was not maintainable as it was barred by limitation. It was submitted that the Hon'ble Tribunal had erred in holding that the applicant should have approached the National Green Tribunal ('NGT') within 6 months from the date of the grant of the impugned order, while the NGT was functional on the date. It was further submitted that the applicant had not challenged the approval and hence, the question of preferring an appeal under Section16 (h) of the NGT Act, 2010 could not have arisen.

The Tribunal considered each side, observing that the writ proceedings had been initiated before the High Court of Karnataka, which was withdrawn with liberty to approach the Tribunal for alternative remedy. The applicant should have filed the application before the NGT within 6 months from the date when the cause of action first arose. Therefore, if the order dated 28.03.2013 was taken as the first cause of action, the same should have been challenged within 6 months therefrom, but it was not done so. Therefore, the application was to be termed as premature. Since the Tribunal had pointed out that the pleadings and averments as set out in the application do indicate that they challenged the order dated 28.03.2013 pertaining to the project, instead of preferring an appeal, he took out an application and filed it couching the relief for directions to stop the construction activities of the said project; this was not maintainable.

Accordingly, the review application was disposed of.

Mr. Asim Sarode & Ors.
Vs.
The District Collector & Ors.
Application No. 47/2015 (WZ)

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Ground Water Contamination, Water Pollution
Decision: Partly allowed
Date: 11th January 2016

JUDGMENT

This application was filed to address the environmental concern faced by residents of more than 12 districts in the state of Maharashtra due to contaminated ground water in terms of increase level of fluorides and supply, thereof. It was the applicant's case that such an increase in the contamination of groundwater due to unabated over-exploitation of groundwater for domestic, industrial and agricultural purpose had resulted in the increase in concentration of fluorides and the supply of such water had encroached upon the rights of the residents to live with human dignity. The applicant's alleged that the Government authorities were fully aware of the prevalence of fluorosis in the districts and had taken necessary steps but the increase in over-exploitation of groundwater due to industrial discharges was aggravating the problem and to this, the authorities had failed to take holistic and integrated approach. Therefore, the applicants prayed for directions to the respondents to submit a plan of action to address the issues, to submit and analysis of the water quality and level of contamination as well as percentage of fluoride, to ensure presence of dental health doctors to address the contamination issue, to provide pure and good quality drinking water and medical treatment to those affected, amongst a few more.

In response to this application, the technical authorities, including Groundwater Surveys and Development Agency (GSDA) and Central Ground Water Authority (CGWA), submitted that the increase of fluorides in water can be attributed to igneous and metamorphic volcanic rocks. The other respondents, which included district collectors of 12 districts and Department of Health, submitted details of water sampling carried out for various drinking water sources. The data presented showed a significant percentage of samples having higher fluoride concentrations than the permissible limit. It was also submitted that a National Programme for prevention and control of fluorosis is being undertaken in some Districts of the State.

Based on the pleadings of both parties and objections raised by the respondents, the Tribunal dealt with five issues for final adjudication. First, whether the increase level of fluoride could be termed as a substantial question related to the environment under section 14 of the NGT Act. Second, whether the alleged human intervention in the form of over-exploitation of ground water could be termed as environment degradation. Third,

whether the problem of excessive fluoride in the groundwater was aggravating in the state and steps had been framed to control it. Fourth, whether the affected people were entitled to compensation. Fifth, whether any further directions were required to be given.

Dealing with the first issue, the Tribunal referred the definitions of 'pollution' and 'stream' as mentioned under the Water (Prevention and Control of Pollution) Act, 1974. The Tribunal read the above definitions with 'Environment Pollution' as mentioned under the Environment (Protection) Act, 1986 to conclude that the term 'pollution' had a wider connotation and includes the cause and effect relationship of pollution caused. Thus, the Tribunal answered in affirmative that the alteration in the fluoride level was likely to pose adverse effect on human health and the documents placed on record affirmed the same. Coming to the second issue, the Tribunal re-emphasized on the public trust doctrine through various judgments of the Hon'ble Supreme Court. This issue was also answered in affirmative by referring to the definition of environment and the legal provisions introduced to regulate groundwater resources in the country. With regard to the remaining three issues, the Tribunal observed that large social efforts were undertaken by authorities to deal with the problem of contamination and for this reason, the Tribunal did not order individual compensation but expected the authorities to provide medical facilities to the affected persons. In view of the same, the application was partly allowed with directions to the CGWB and SPCB to prepare a list of industries requiring NOC and publish the list on their website, to issue directions for closure if any industry did not make the list, to monitor the water quality and publish the results on a yearly basis, to discontinue all sources having higher fluoride contents, to provide necessary medical facilities to the affected patients and to make policy decisions to disallow crops in the area whether groundwater level was found highly contaminated.

Accordingly, the application was disposed of with no order as to costs.

N. Alaguuthu Velayudam Pillai
v.
The State of Tamil Nadu & Ors.
Application No. 170/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: River pollution, Encroachment
Decision: Dismissed
Date:11 January, 2016

JUDGMENT

This application was filed seeking a direction against the respondent authorities to maintain the Kiruthumal River free from contamination/pollution as well as from any encroachments. According to the applicant, the river had been spoiled due to the waste materials being thrown into it and lack of any maintenance of the same. Therefore, the applicant prayed for renovation of the river by removing the debris, which was obstructing the free flow of water so as to cater to the needs of agriculturalists who had their farm activities in and around the city.

The Public Works Department (PWD) submitted that the maintenance of the river had begun in 2013-2014 and as on the date of the application, the river was free of encroachments and had been restored to its original position. Madurai Corporation, another respondent, in its reply, stated that the garbage and debris thrown by the public was being cleared regularly for the free flow of the river and the river was being restored to its original state at a cost of Rs.60 Crores under Irrigated Agriculture Modernisation and Water Bodies Restoration and Management (IAMWARM) Project of World Bank.

Considering the statements of both parties, the Tribunal directed that both PWD and Madurai Corporation should not allow any garbage and debris to be put in the river and ordered removal of all existing debris so as to maintain the free flow of water. It also directed the PWD to take appropriate action to remove encroachments. The Tribunal states that the applicant was free to implead himself in the similar writ petitions before the Madras High Court, which was going to rule on the subject on the basis of the report of the Committee of Experts.

Accordingly, the application was dismissed with no order as to costs. The applicant was given the liberty to approach the Tribunal in case of non-compliance of directions by the respondents.

T.K. Subramanian
v.
The District Collector & Ors.
Application No.200/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Paper Mills, Water Pollution
Decision: Dismissed
Date: 11 January, 2016

JUDGMENT

In this application, the applicant prayed to direct the official respondents 1-4 to close down the paper mills run by the 5th and 6th respondents in Erode District and also to issue an order of permanent injunction against the said respondent paper mills.

In its 2016 report, the Pollution Control Board had stated that the Consent to Operate had been issued to the 5threspondent, which was renewed in 2015 with the validity period up to June 2016. However, following a telephonic compliant received against the disputed unit, the inspection was carried out which lead to a show cause notice being issued for various violations. Certain suggestions were made such as to take preventive measures to avoid flow of rain water mixed with effluents outside the premises, to provide proper storm water drains within the premises, to raise the brim of the effluent treatment plant civil components, units to avoid spillages of solid waste on the roads during transportation of sludge, industries to inform nearby public about improvement work being carried out in the treatment plant.

Further inspections were carried out which lead to the Board regularly monitoring the river water quality and the officials of the concerned District Environmental Engineer regularly monitored the paper industries. Therefore, the Tribunal concluded that the impleadment of other paper units was not necessary and directed the Board to continue to monitor all units at close intervals and satisfy compliance to all pollution norms. The Board was also permitted to take action in accordance with law under Water Prevention and Control Act in case of non-compliance.

With the above direction, the application was disposed of without costs.

M/s. Pannaiyoor Regional Citizens Welfare Trust
v.
Ministry of Environment, Forests and Climate Change & Ors
Review Application No.22/2015 in Application No. 05/2013
AND
Mr. Dharmakrishnan
v.
Principal Chief Conservator of Forest, Chennai & Ors.
Review Application No. 23/2015 in Application No. 04/2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Review, Restoration
Decision: Dismissed
Date: 11 January, 2016

JUDGMENTS

The applicants filed this review application seeking review of the order dated 29.09.2015 wherein the Tribunal had disposed of the main applications after recording that since the CRZ clearance granted to Rajakammanglam Fishing Harbour in Kanyakumari District was revoked by the MoEFCC, nothing survived in the application. The applicant pleaded that the Tribunal while passing of the said order failed to take notice of the fact that the project proponent had constructed breakwaters in eastern and western side on the strength of the CRZ clearance which still existed at the site and led to accretion on one side and erosion on the other, thereby affecting the integrity of the coast. Since the Tribunal had not taken consideration of the existence of the breakwater and the fact that the site had to be remediated and restored to its previous state, the applicants sought review of the order seeking grant of reliefs in that regard.

The Tribunal noted that the fact of the existing construction of breakwater was brought to the notice of the Ministry and was also recorded in the order. The Tribunal stated that while the Clearance sought to be revoked was cancelled by an order issued by the MoEFCC, the consideration of the grant of main relief namely the revocation of the impugned clearance would have arisen when a copy of the said order was filed before the Tribunal and all other reliefs were considered to be consequential to the main relief. The Tribunal noted that the original applications were disposed of in view of the revocation of the Clearance by the Ministry and the existence of construction was also taken note of by the authority, therefore, the question of other reliefs never arose. The Tribunal therefore did not find any ground for review of the order and left open to the Ministry to pass appropriate orders in this regard.

East Kamaraj Nagar
v.
The Commissioner & Ors.
Application No. 219/2015 (SZ)

Coram: Hon'ble Justice M.Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Sewage, Storm-water Drains, Flooding
Decision: Dismissed
Date:12 January, 2016

JUDGMENT

The application was filed by residents of the East Kamaraj Nagar RWA seeking directions against 6 respondents to ensure and take action to prevent sewage lines getting connected with storm water drains and to directly connect storm water drains of Radhakrishnan Nagar to the Buckingham Canal without entering East Kamaraj Nagar and to direct authorities to take action to prevent flooding in East Kamaraj Nagar, thereby preventing pollution to protect public health.

Following an appeal for an interim order, the Hon'ble Tribunal directed the Commissioner, Corporation of Chennai (1st Respondent) to look into the matter and file a status report, the filing of which led to issuance of directions to the Regional Joint Commissioner (2nd Respondent) to inspect the disputed site. The findings of the inspection affirmed the allegation that recent heavy rainfall had led to flooded rainwater being pumped from Radhakrishnan Nagar to East Kamaraj Nagar and the water level had risen to a high level, thereby inundating many residential areas. The Tribunal had granted an interim order to the applicants, issuing directions to the Commissioner of the Corporation of Chennai and the Regional Joint Commissioner to file a Status Report by conducting a spot inspection.

The Tribunal observed that the Corporation of Chennai had started constructing storm water drains, which couldn't be completed at the signal junction of LB road due to non-availability of permission of the Police Department, existence of electrical cables, pipes etc. Therefore, directions were issued to the Commissioner of Police to permit the respondents to complete the construction of drains and to the Tamil Nadu Electricity Board ('TNEB') to do the needful in respect of shifting of the cables and pipes to expedite the construction work. As for the complaints regarding the sewer connections, notices were issued under Section 44 of the Tamil Nadu Public Health Act, 1939, following identification of illegal sewer connections. Directions were also issued to the Chennai Metropolitan Water Supply and Sewerage Board to restrain mixing of sewage into storm water drains and a super sucker machine was brought on hire to remove the silt and clean the drains in the area. Therefore, Respondents 1-5 were directed to follow necessary steps and take the requisite action within 3 weeks from the date of issuance of necessary

permission from the Commissioner of Police and the TNEB for completion of construction work.

Accordingly, the application was disposed of.

Mr. Sandeep Raghurajan
v.
Tamil Nadu Pollution Control Board & Ors.
Application No. 291/2014 (SZ)

Coram: Hon'ble Justice M. Chokalingam, Hon'ble Shri P.S. Rao
Keywords: Water Pollution, Air Pollution, Sewage Treatment Plant
Decision: Disposed
Date: 13 January, 2016

JUDGMENT

This application was filed by a resident of VGN Platina (a residential complex) at Ayapakkam Village, Tiruvallur District against the respondent developers to prevent air and water pollution caused due to the operations of a Sewerage Treatment Plant located the said complex. and for other reliefs. It was the applicant's case that at the time of purchasing the flat, the developers had charged a certain sum from the residents for construction of the STP and to provide individual septic tanks to each apartment block. However, no such individual tanks were provided and the entire residential complex containing 672 flats were dependent upon the STP which was not efficient and adequate enough and further caused nuisance by polluting the surroundings. According to the applicant, the STP was not licensed by the local authorities and the Board and was also against the siting criteria as it was built just within 3 feet from the nearest residence without any compound wall. Further, the impugned STP was designed to handle only 5 KLD of sewage resulting in overflow of sludge, causing water pollution and due to this, a pungent odour was being generated which may have been composed of harmful gases.

In response, the Pollution Control Board stated that it had undertaken an inspection upon receipt of compliant made by the residents. It was observed that the STP was built too close to the flats without any buffer area. Though directions were issued to revamp the STP, no action was initiated by the respondent developer due to which the Board had to issue a show cause notice under the Water and Air Acts. The STP was also found operating without any consent from the Board. The Panchayat (Respondent No. 2) submitted that it had granted building permission to the respondent developer. However, noticing that the STP was constructed illegally, along with a commercial complex and clubhouse, a notice was issued to the respondent developer under Rule 34 of the Tamil Nadu Panchayat Building Rules, 1997 to remove the unauthorized constructions. However, the respondent developer paid no heed to the same.

In its reply, the respondent developer stated that the STP was built considering the welfare of the occupants of the flats in the complex and the CDMA approval was obtained by the previous owner of the land for the layout plan only. Further, he stated that a common STP was constructed to cater to the needs of those living in the complex, as the construction of individual tanks would not have been as efficient. It was further

submitted that there were no sewage treatment policies in the State or any specification laid out for construction of STP for residential houses requiring authorization from the Board, the sewage was treated by the storage and collection tanks which was located underground, further the STP was designed to treat 500 KLD of water which was sufficient for 672 residential units. On the other hand, the respondents 4-15, who were residents of the VGN Platina, submitted that they were suffering from menace of water, air and noise pollution and the stench emanating from the STP was unbearable.

The Tribunal considered the case of the applicant and directed the DEE, Pollution Control Board to inspect the unit once again, from which it was noted that the residential complex lay in an underdeveloped area and therefore, it was necessary for it to have its own sewage disposal mechanism to treat domestic sewage. The Tribunal denied that individual septic tanks would have been more environment friendly than a centralized STP. The report of the DEE gave a clear picture, with no adverse remarks against the unit as the unit had been revamped and the defects rectified. With regard to obtaining consent from the Board, the DEE indicated that the respondent developer had filed an application for consent, which was returned for want of additional details and was yet to be resubmitted.

In light of the above circumstances, the Tribunal issued directions to ensure that the STP was made to function properly without creating any nuisance to the residents. The respondent developer was directed to submit the application to the Board after attending to the shortcomings within a fortnight from the date of the order and the Board was directed to process the same and take appropriate decision within 4 weeks. The tribunal issued necessary directions for efficient functioning of the STP. However, it denied to look into the deviation from the approved plan or indulge in the violation of the Panchayat Building Rules 1997 as the same were not related to environment and pollution issues. Accordingly, the application was disposed of.

Suo Motu
Tribunal on its Own Motion
v.
The Secretary to Government & Ors.
Application No. 182/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Water pollution
Decision: Disposed
Date:13 January, 2016

JUDGMENT

The matter in the present application was taken cognizance *suo motu* by the Tribunal on the strength of communication addressed by Mr. Ramachandra to a judicial member. He complained of poor quality of government tap water, which was making everyone switch from public taps to bottled water.

The 3rd respondent, Chennai Metro Water Supply and Sewage Board, denied such allegations and stated that the supply of water had been tested scientifically and was safe for drinking. They added that sample tests of water were taken from different sources everyday and care was taken to ensure safe and satisfactory sanitary quality. Apart from that, residual chlorine tests were carried on daily basis to ensure that the water was adequately disinfected along with intense surveillance of water quality, investigation of Acute Diarrheal Disease, distribution of chlorine tablets, disinfection of water tanker and campaigning and awareness of boiling water before drinking.

After looking into the numerous tests being carried out regularly by the 3rd respondent in as many as 1600 places, with over 60 samples collected everyday thereby ensuring adequate preventive and precautionary measures being taken to supply safe drinking water to the public, the Tribunal disposed of the current application and directed the 3rd respondent to continue taking necessary steps as it had been taking in the past.

Periappa Nagar Residents Welfare Association
v.
The Commissioner & Ors
Application No.43/2013 (SZ)

Coram: Justice M. Chockalingam, Shri P.S Rao
Keywords: Ground Water Contamination
Decision: Dismissed
Date: 13 January, 2016

JUDGMENT

This application was filed seeking a direction for the respondents to close the Sewage Water Pumping Station located at Periappa Nagar and relocate it to an alternative site but also restrain the respondents from establishing a Sewage Water Pumping Station and Plant at Periappa Nagar.

According to the applicant, the direction was imperative due to the improper maintenance of the Sewage Water Pumping Station ('Station') leading to foul odour being emanated in the place. He submitted that no public opinion had been called for during the establishment of the units and the respondents had not taken steps to assess the level of ground water contamination caused due to the existing station which was a threat to the public health too. In view of the possible degradation of the environment and threat of pollution to public health, the aforementioned directions were sought.

However, the respondents denied all allegations of the applicant and contended that all necessary steps had been taken to prevent pollution and a new underground sewage scheme had been taken up along with the necessary consent from the State Pollution Control Board. They also submitted that site in question had been identified only after detailed survey of the lands available and a public enquiry had also been made.

After hearing both sides, the Tribunal confirmed that the application should be disposed of as not only the Consent to Establish was granted for the project but necessary inspection and public inquiry was also carried out. In view of the necessity of protection from health hazards and the protection of the environment, the Commissioner of the Palani Municipality had confirmed that the pumping station was imperative to prevent such pollution. Hence, the Tribunal was of the view that the relief sought for could not be granted but liberty was given to the applicant to make an appeal if so advised challenged the consent granted.

Accordingly, the application was disposed of.

S. Moorthy
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No.240/2014 (SZ)

Coram: Hon'ble Justice M.Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Poultry Farm, Air Pollution, Water Pollution
Decision: Dismissed
Date:13 January, 2016

JUDGMENT

The applicant a resident of Namakkal District, who owned agricultural fields, including a well, which was the main source of irrigation of crops, in Moolakaadu Village filed this application with a prayer to direct respondents 1-3 to take action against Palaniappan, ('respondent 4') for running a poultry farm and mill, thereby causing air and water pollution in the surrounding lands, violating Environmental Protection Act, 1986.

The owner of the poultry farm, respondent 4, submitted that he had taken all preventive and precautionary measures to prevent pollution in the disputed area. Following these submission, inspection of the poultry farm was carried out by District Environmental Engineer ('DEE') which established that all necessary preventive measures had been taken by the respondent and nothing was found to indicate that the alleged pollution continued.

Therefore, the Tribunal found no impediment in disposing of the application with a direction to the concerned DEE to monitor the 4th respondent's unit to ensure that all preventive measures continued so as to prevent pollution in the future.

Accordingly, the application was dismissed.

Jasaram & Ors
Vs.
State of Rajasthan & Ors.

Original Application No. 31/2015 (CZ)

Coram: Hon'ble Mr. Justice Dalip Singh, Hon'ble Dr. Devendra Kumar Agrawal
Keywords: Air Pollution
Decision: Dismissed
Date: 14 January, 2016

JUDGMENT

The application was filed by the applicants aggrieved by the air and noise pollution generated by the operations of the cement plant and thermal power plant of the Respondent No. 3 located near the houses of the applicants. Due to the increase in pollution level by the plant, the applicants prayed for shifting of the same to some other distant place or in the alternative to rehabilitate the applicants at a location where they could also carry out their agricultural activities.

Considering the allegations made by the applicants, the Tribunal directed the State Pollution Control Board for inspection of the power plant alongwith the mining leases operating in the area. The inspection report revealed few parameters of ambient air quality in excess but the stack emissions were found to be in permissible levels. However, it was observed that the pollution was due to the ongoing road construction, vehicular movement and also the mining leases which had unmetalled approach or link roads. Certain suggestions were made to control environmental pollution in the area which included development of green belt, watering of kuchha roads in order to minimize dust pollution etc.

The Tribunal declined to grant any reliefs to the applicants as the Respondent No. 3 was not found responsible for enhanced level of RSPM in the ambient air quality of the area. However, in view of the precautionary principle, the Tribunal gave directions to the respondent industry to install five ambient air quality monitoring stations with the provision of online display and to install online stack emission monitoring system and develop thick plantations on the boundary adjacent to the applicants and to the Board to undertake periodical inspections of the respondent industry.

Accordingly, the application was disposed.

The Proprietrix, M/s. Sankar Blue Metals
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 04/2014

The Proprietrix, M/s. Sankar Blue Metals
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 05/2014

M/s. R.K.V. Blue Metals
v.
The Appellate Authority, Tamil Nadu Pollution Control Board & Ors.
Appeal No.08/2015

M/s. R.K.V. Blue Metals
v.
The Appellate Authority, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 09/2015

M/s. Literoof Housing Limited
v.
The Appellate Authority, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 10/2015

AND

M/s. Literoof Housing Limited
v.
The Appellate Authority, Tamil Nadu Pollution Control Board & Ors.
Appeal No.11/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Professor Dr. R. Nagendran
Keywords: Stone crusher, Siting criteria, Rejection of consent
Decision: Allowed
Date: 14 January, 2016

JUDGMENT

The appeals were filed challenging the orders of the Appellate Authority of the Tamil Nadu Pollution Control Board passed under section 31 and 28 of the Air Act, 1981 and Water Act, 1974 respectively which upheld the decision of the Board wherein the applications of consent of the appellant stone crusher units were rejected on the grounds that the same were situated within 1 km radius of the existing stone crusher units in

violation of the siting criteria which prohibited establishment of stone crusher unit within 500 metres of National or State Highway, residential areas and religious places and to maintain a minimum distance of 1 km between two crushing units to avoid dust pollution.

The appellants challenged the said order on the ground that the units were running since long with valid licenses and the Board had passed the orders merely on spot inspection without examining as to whether the distance criteria was comparable to any existing crushing units operating with valid consent to operate. It was further contended by the appellants that the 1 km distance criteria was not applicable in the present case as the Board in its rejection order nowhere stated about establishment of any new stone crusher unit within 1 km from the appellants' units. The appellants alleged that while upholding the rejection order of the Board, the appellate authority failed to consider that the order was passed in violation of the principles of natural justice as the appellants were not granted any opportunity of being heard. In response, the respondent Board stated that since the appellant units did not have valid consent to operate, in absence of the same it was not open to them to raise the question of distance criteria or violation of the principles of natural justice.

The Tribunal analyzed section 21 and section 25 of the Air Act, 1981 and Water Act, 1974 respectively which mandates prior consent from the Board for carrying out a polluting/industrial activity. The Tribunal noted that by virtue of the said provisions, the compliance of principles of natural justice is complete, only after the Board conducts inquiry and provide reasons for rejection. The Tribunal further noted that under Section 31 of the Air Act, 1981 and section 28 of the Water Act, 1974, the appellate authority performs quasi-judicial function which contemplates grant of full opportunity to hear before rejecting any application or appeal. It is further empowered to look into the correctness of the order passed by the Board by a proper analysis of the factual aspects.

The Tribunal observed that while passing the order, the appellate authority did not analyse the correctness of the order passed by the Board and even failed to determine the exact distance between the crusher units. In view of the same, the Tribunal deemed it appropriate to set aside the orders of the Board as well as the appellate authority and remitted the matter back to the Board to consider the application for consent of the appellant units by giving proper reasons and opportunity to the parties within four weeks from the date of the order. Accordingly, the appeals were allowed.

Thulaseedharan Pillai
v.
MoEFCC & Ors
Application No. 82/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Quarrying, Prior EC, Consent
Decision: Allowed
Date:14 January, 2016

JUDGMENT

This application was filed challenging the illegal quarrying carried on by the 9th respondent in more than 1 acre of land in a certain block of Veliyam village, Kottarakara Taluk. It was alleged that the respondent had started conducting quarrying in 2011 based on a license issued by the Panchayat and the explosive license issued by the Joint Chief Controller of Explosives. It was the case of the applicant that the respondent was granted a short term permit for more than 27 acres of land, which was annually renewed, however, the quarrying was being carried out in an unscientific manner in large quantities, resulting in dust and sound pollution apart from heavy vibrations caused by explosions. Further, the applicant stated that the 9th respondent had obtained consent from the Board, which was in violation of the Environment (Protection) Act, 1986 and the complaint made by the applicant had not been considered by the authorities on the basis that consent had been granted. It was also the case of the applicant that the 9th respondent had started encroaching beyond the survey number in which he was conducting quarrying and as a result of the blasting, huge chunks of rocks were landing on the property of the applicant. Even more so, the Consent to Operate obtained by the 9th respondent had expired in 2014 and even though the respondent had submitted an affidavit stating that it would obtain Environment Clearance ('EC') and would not carry out quarrying exceeding a depth of 6m, the applicant was unsatisfied by the same and filed the application praying for directions restraining the respondent from carrying out quarrying activities without obtaining EC.

In it's reply, the 9th respondent, while questioning the maintainability of the application, denied all the allegations as false and stated that all quarrying operations had stopped in 2015 and that it had apply for renewal of the license. It was also submitted that the Board gave consent only after visiting the site and that all quarrying activities were carried out with valid consent and clearance. The Board reiterated the same, stating that the 9th respondent had applied for Integrated Consent to Operate the quarry and after inquiry and having found no residential building within 100m radius from the proposed site, the consent was issued in 2012 till 2014. However, complaints were issued by residents in the surrounding area and directions were issued to the 9th respondent to carry out dust control measures and it was also found that the distance criteria was violated, based on

which a show cause notice was issued to the respondent and it was directed not to conduct any quarrying activities.

The Tribunal was of the view that the Board should have considered the application under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 independently and pass an order, dispensing the practice of issuing a consolidated order as it did in the present case. Due to this, the Tribunal found that there were some contributions by the Board in not insisting for the prior EC from the concerned authority as a condition precedent to obtain Consent to Establish and for the same reason, considering that the 9th respondent was carrying out activities in accordance with the licenses granted to it, there was no need to take penal action against the 9th respondent.

Furthermore, as the respondent's permit had expired in 2015 and it was not carrying out any quarrying activities, the Tribunal passed directions to the respondent to only carry out quarrying once the permit was renewed in accordance with law and accordingly, the application was allowed, with no order as to costs.

Mr. Filomeno Vincente Gregorio
Vs.
State of Goa & Anr.

Appeal no. 22/2015 (WZ)

Coram: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Demolition, Encroachment, Coastal Regulation Zone
Decision: Partly allowed
Date: 15th January 2016

JUDGMENT

This appeal was filed against the order of demolition of the structures of the Appellants issued under Section 5 of the Environment (Protection) Act by the Goa Coastal Management Authority ('GCZMA') vide communication dated 08/05/2015. In the present matter, the appellant claimed to be the owner of the residential structure in Utorda village, which included toilet, bathroom and storeroom and was claimed to be in existence since 1960 or thereabouts. The GCZMA issued a show cause notice against the appellant on 17/06/2011 where he was asked to remove alleged encroachment in the Utorda beach. However, the appellant contended that the existing structures were constructed on his own land survey and were therefore not subject to the order of demolition dated 23/08/2012 which was passed consequent to the above stated show cause notice. This demolition order was challenged before the NGT and disposed of by order dated 13/03/2013. Subsequently, the GCZMA issued another show cause notice dated 13/04/2013 in respect of illegal construction of structures. This show cause notice was challenged and disposed of by the Tribunal vide order dated 06/01/2015. The present appeal originated from the order of GCZMA dated 08/05/2015 which was issued in compliance with the Tribunal's directions dated 06/01/2015.

. It was the case of the Appellant that the structures, alleged to be illegal, were existing pre-1991 and for the same he relied on various sale deeds. According to the appellant, the GCZMA issued the first show cause notice questioning the legality of the structure as early as 23/02/2007. Thereafter, no action was taken by the GCZMA upon receipt of the reply to the show cause notice. The appellant thus raised the issue of estoppel and res judicata. The appellant also submitted that the contention by the respondent that the necessary approval from the authorities had not been sought under the Coastal Regulation Zone ('CRZ') notification for the construction did not sustain as the structures are existing pre-1991. It was further submitted that the commercial use of the structures cannot be used by the GCZMA to term the structures as new. In response to the appeal, the GCZMA submitted that the structures were constructed after 1991 and were being used for commercial purpose which was not permissible and therefore the demolition orders were issued against the illegal structures.

Having perused the pleadings, the Tribunal noted that the GCZMA had dealt on the subject matter, both in its agenda items as well as the minutes before issuing the final speaking order. The Tribunal also noted that the previous show cause notice related to alleged illegal construction was different from the present one and thus, the appellant could not be allowed to take a plea that the present one could not be issued in view of dropping of proceedings in the earlier show cause notices.

Based on the above observations, the Tribunal was of the opinion that the GCZMA erred in concluding that structures did not exist prior to 1991. The Tribunal noted that the agreement of charges dated 12/01/1972 and subsequent sale deeds did not mention about the structure but referred to the plan/sketch which was annexed to the sale deed. The Tribunal noted that it did not find any reason for not accepting the documents as substantial evidence for accepting the existence of the said structures prior to 1991. The Tribunal also considered the submission by the Appellant that the commercial activities were not within the purview of the GCZMA and held that in light of Rule 6(d) of the CRZ Notification 2011 it was not inclined to accept such submission. The Tribunal partially allowed the application and directed the Chairperson of the GCZMA to set out the enforcement mechanism in terms of its mandate as the CRZ Notification 2011. Further, the Tribunal ordered to stop all modifications to the disputed structures without the requisite permission from GCZMA and limited the demolition order to such expansion, modification or renovation carried out over and above the structures referred in the document of 12/01/1972. Finally, the Tribunal directed that the commercial activities cannot be continued at the premises without the permission of GCZMA as per CRZ Notification 2011.

Accordingly, the appeal was disposed of with no order as to costs.

Paryavaran Dakshta Manch & Ors.
Vs.
Union of India & Ors.
Application No. 55/2014 (WZ)

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Wetland, Waste Dumping, Water Pollution, Special Economic Zone, Coastal Regulation Zone
Decision: Partly allowed
Date: 15th January 2016

JUDGMENT

This application was filed with regard to a land situated in Kopri area of Mulund in eastern Thane City which was shown in the wetland map prepared by the Central Government. The applicants contended that they had come across development of buildings within the prohibited area and the debris from the construction activities was being dumped in the natural flow of seawater and the wetlands. The applicants also contended that the construction activities led to transportation over the wetlands as a result of which Mangroves were trampled and destructed. Upon enquiry, it was found that the Ministry of Commerce and Industry had vide its notification dated 23/04/2008 declared certain areas in favour of Respondent No. 9 (Sunstream City Private Ltd.) and certain areas had been declared as Special Economic Zone.

It was the case of the applicants that the developer of the project i.e. Respondent No. 9 had proceeded with the construction activity without following the conditions of the permission and the Wetland Rules. The applicants contended that the land was covered under CRZ-I and therefore there was a legal prohibition on any kind of development on the said land. Further, the applicants submitted that the Disaster Management Plan had indicated Kopri area of Mulund, as flood prone area and illegal activities by Respondent No. 9 would cause more harm to the vicinity in the flood prone area. Consequently, the applicants sought directions to restrain the respondents from encroaching the land in question and also direct the respondents to take step to declare the area as Wetland Park or conserve the same to maintain protective natural habitat of birds, flora and fauna, in order to maintain biodiversity.

In reply to the application, the MoEF filed an affidavit which revealed that the lands in dispute were contiguous and covered under the CRZ areas. The affidavit also disclosed that the MoEF on 21/03/2007 issued a letter in which it reclassified the disputed area from CRZ-II to CRZ-III on the recommendation of Maharashtra Coastal Zone Management Authority ('MCZMA'). The Respondent No. 9 submitted that the application was time barred and that development of non-polluting industries was a permissible activity in the CRZ area. It was also submitted by the Respondent No.9 that it had not destructed any wetland nor had reclaimed the land for construction activities. The case of the developer

was that the construction was approved by the MCZMA and the Municipal Corporation and was not likely to destroy the flora and fauna in the area. A reply affidavit was also filed on behalf of Environment Department of State of Maharashtra in which it was contended that the MoEF permitted the reclassification of CRZ-I into CRZ-III on rational basis, and thus, the construction activity by Respondent No. 9 was permissible under the Coastal Regulations.

The only question that arose for consideration was whether the reclassification could be done and the disputed site could be reclassified as CRZ-III from CRZ-II. The affidavit submitted by the MoEF clearly showed that the land at Kopri was reclassified and this reclassification was apparently carried out at the instance of the Respondent No. 9. The MCZMA discussed the issue on 07/07/2007 and recommended the proposals for such reclassification but this communication did not give any substantive reasons for reclassification of the property except for what was demonstrated by the Respondent No. 9 to the MCZMA. Thereafter, the Tribunal called upon the MoEF to explain the legal parameters for reclassification of CRZ area, in response to which the MoEF informed that the saltpan activity at Kopri had been discontinued and the plot was a contiguous portion of property and that there were no mangroves on the proposed site and so, the reclassification was permissible. The Tribunal also noted the discrepancy in the identification and demarcation of the coastline on the basis of report of the Centre for Earth Science Studies, Chennai and how the MCZMA sought to rely upon another report, about wetland and Thane creek area, prepared by NIO Goa without giving any justification for accepting one report over other. The Tribunal opined that the reclamation of land was likely to cause destruction of Mangroves, saltpans and would endanger the environment and therefore the entire procedure should be reconsidered by the MoEF. Under these circumstances, the Tribunal issued directions to the MoEF to take decision regarding the reclassification on the basis of legal parameters, to the developer to proceed with the construction subject to the condition of not claiming any equity or requesting expansion of the project and to the MoEF and MCZMA to carry out inspection at the construction site to ensure compliance of CRZ conditions.

Accordingly, the application was disposed of with no order as to costs.

Paryavaran Dakshta Manch & Ors.
Vs.
Union of India & Ors.

Application No. 55/2014 (WZ)

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Stay Order
Decision: Allowed
Date: 15th January 2016

JUDGMENT

The matter was taken upon mentioning by the Respondent No. 9 (Sunstream City Private Ltd) for the purpose of stay of the judgment. The Tribunal granted stay on the effect of the entire judgment for four weeks to facilitate the Respondent to prefer Appeal in Supreme Court. The Tribunal also clarified that stay of the judgment also included stay on construction activities of the Respondent, which were otherwise permitted in the final order, as stay was not on any particular part of the judgment but the entire part thereof.

Loksevabhavi Vikas Sanstha & Anr.
Vs.
Maharashtra State Road Development Corporation Ltd. & Ors.
Application No. 93/2015 (WZ)

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Waste Management, Sewage Treatment Plant ('STP'), Food Mall
Decision: Disposed
Date: 15th January 2016

JUDGEMENT

In this application, the applicants claimed to be victims of environmental degradation due to mismanagement of the activities of Food Mall and Toll Plaza at Mumbai-Pune Express Highway in Khalapur. They contended that there was no suitable waste management plant to take care of disposal of waste generated from the Food malls and as such, the stale food generated repugnant smell which often nauseated people passing through the area. It was also contended that the stale food sometimes got mixed with the flow of the running drain water thereby causing environmental danger due to impact of breeding of mosquitoes and other insects. Further, the applicants alleged that the Maharashtra State Road Development Corporation ('MSRDC') and the private respondents did not take steps to eradicate the problem despite the directions issued by the Maharashtra Pollution Control Board ('MPCB').

In reply to the application, the private respondents reported compliance of the directions issued by the MPCB, as far as setting up of STP was concerned, and the same was said to be in order after inspection by the MPCB. The private respondents agreed to complete the STP within 2 months from the consent granted by the MPCB. The Tribunal stated that after receiving the consent to establish, the work of establishment of STP and the operation thereof at the Toll Plaza by the said Respondents should be made functional within a period of 3 months and in case of failure to comply with such directions they will be liable to pay costs of Rs. 20 lakhs as remedial costs and Rs.5 lakhs per month for restoration due to the default committed by them.

With regard to the Food Mall of MSRDC, the Tribunal noted that it had already directed vide order dated 17th October, 2015 to prepare a comprehensive plan which was to include installation of waste management plan including STP. In compliance of the same order, said respondent submitted that the proposed plan would be implemented as per the work order issued on December 22nd, 2015 and the entire process of preparation of report would be completed by end of February, 2016. It was further submitted that the waste management plant including STP would be operational by January, 2017.

The Tribunal noted that the work for execution of plan was to be carried out expeditiously and it also issued directions as to the disposal management in respect of waste material

useful for bio-degradation which was to shifted to the plant used for biodegradable and composting as well as the non-biodegradable materials like plastic waste, which was to be segregated and disposed of separately in a scientific manner as per the guidelines of the MPCB. For the interim period, directions were issued to MSRDC to ensure that short term measures were taken to avoid pollution within and outside the Food Mall premises and non-compliance with the above directions would render them liable to pay costs. Further, the above respondents were also directed to pay Rs. 1 lakh to Applicant No. 1 as litigation cost.

Accordingly, the application was disposed of with order as to litigation cost.

Subhashri Bio Energies Pvt. Ltd.
v.
Tamil Nadu Pollution Control Board & Ors
Application No. 07/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Water Pollution
Decision: Dismissed
Date:18 January, 2016

JUDGMENT

This application challenged the impugned order of the Tamil Nadu State Pollution Control Board ('TN PCB') which was a show cause notice issued under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 in which grave charges had been made against the applicant unit regarding stagnation of the effluent from the decanter, breach of the side walls of the compost yard and non-compliance with the decision arrived in the personal hearing before the JCEE.

The Tribunal stated that when a show cause notice is issued under Section 25, the remedy available is to approach the Appellate Authority, which was granted to the applicant. It also directed the State Government and the TN PCB to consider the representation of the applicant within the stipulated time, therein.

S.P Muthuraman
v.
The Union of India & Ors
Application No. 212/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Prior EC, Construction project
Decision: Dismissed as infructuous
Date:19 January, 2016

JUDGMENT

This application was filed for a direction against the 5th respondent, who is the project proponent, to stop all construction activities and sale of flats stated to have been constructed in violation of Environment Impact Assessment ('EIA') Notification 2006, without obtaining prior Environment Clearance ('EC').

The applicant had made an application under the Right to Information ('RTI Act, 2005') and was informed that the respondent had not made any application for prior EC. However, the respondent denied any such allegation and stated that it had obtained the requisite EC for putting up the residential construction project. A copy of the EC was served to the applicant, which affirmed that the EC had been obtained, leading to the discovery of an obvious mistake on the part of the Information Officer under the RTI Act.

Accordingly, the application became infructuous and was dismissed.

M/s. Preethi Feeds
v.
Tamil Nadu Pollution Control Board & Ors
Application No.6/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Renewal of consent, Show cause
Decision: Dismissed
Date: 19 January, 2016

JUDGMENT

In the present application, the applicant challenged the show-cause notice issued by the Tamil Nadu Pollution Control Board ('Board') by which the Board had directed the applicant to show cause as to why Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act') could not be invoked. The applicant's submission was declared premature and the Hon'ble Tribunal directed the Board to pass appropriate orders on merits.

The applicant further submitted that the applicant unit had the consent to operate from 2007-2015 and the renewal application had been filed before the expiry of the permission; the Board however, had not considered the same. According to the applicant, the non-consideration of the renewal application was the reason for passing the impugned show-cause notice.

The Tribunal directed the Board to consider the pending application and pass appropriate order within a period of 4 weeks from the date of receipt of the copy of the current order. Further, it was also made clear that till the aforementioned orders were passed, the Board should not invoke the penal provisions under the Air Act 1981.

Accordingly, the application was disposed of.

Haneefa Kunju
v.
State of Kerala & Ors
Application No. 384/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: River Sand, Quarrying
Decision: Dismissed
Date: 20 January, 2016

JUDGMENT

In the current application, the applicant had sought for the issue of a mandamus directing the government authorities to take effective steps to prevent the quarrying of river sand in the river Ittikara within the limit of the Nedumpana Gram Panchayat, District Kollam. The status report had stated that no illegal mining was being carried out, hence, the State of Kerala was directed to state the activities being carried out by the private respondents against whom allegations were made.

In the memorandum filed by the State of Kerala, criminal cases against Jafar and Biju, the 13th and 14th respondents had been filed for violations of sections 20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Therefore, the Tribunal directed the state to continue the prosecution in respect of the said respondents and ensure that the river remains free from illegal mining.

Accordingly, the application was closed with liberty to the applicant to approach the Tribunal in the event illegal mining is not arrested by the government.

M/s. S.P.T Water & R.O Water Suppliers
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 9/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Consent, Over-Extraction Category, Packaged Drinking water
Decision: Allowed
Date:21 January, 2016

JUDGMENT

This application for a direction against the 3rd respondent, TANGEDCO, to restore electricity to the applicant's water unit for the purpose of cleaning membranes and machinery without any commercial involvement till the BIS certificate was obtained.

The applicant owned a packaged drinking water unit, which fell under the Over Extraction Category due to which the No Objection Certificate ('NOC') application was rejected by the Public Works Department ('PWD'), and hence the requirement of getting consent from Pollution Control Board ('Board') did not arise. The applicants were of the view that disconnecting the power supply would damage the machines' membranes and cause financial hardships to them.

In view of the aforementioned submissions, the 3rd respondent was directed by the Hon'ble Tribunal to reconnect the electricity supply for required purpose until further order. It also directed the applicant to not carry out any commercial activity during that period and the Board was directed to monitor the same and take appropriate action, including imposition of heavy penalty, upon failure of applicants to carry out the Tribunal's order.

Accordingly, the application allowed.

M. Michael Saviour Raj
v.
The Union of India & Ors
Application No. 171/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Cement Packing Unit, Prior EC, Consent
Decision: Dismissed as infructuous
Date: 21 January, 2016

JUDGMENT

This application was filed for directions against the respondent company, Ramco Cements for setting up a cement packing unit in the Thirunelveli District without obtaining necessary Environment Clearance ('EC') and Consent from the concerned Pollution Control Board.

The respondent disputed the application by stating that it was not mandatory to have an Environment Impact Assessment/EC in so far as it related to establishment of a cement packing unit however, it stated that it had obtained the consent to establish from the Board but since the respondent did not wish to continue with the unit due to certain reasons, it decided not to renew the consent after the same was expired.

Considering that the respondent did not intend to establish the unit and the prayer sought for in the application had become infructuous, the application was closed with liberty to the applicant or any other person to agitate the same when the proper cause of action arose.

Accordingly, the application was disposed of.

N.R. Appusamy
Application No.22/2015
V.K Ravi
Application No. 223/2015
K. Prabhakaran
Application No. 224/2015
Mr. A. Thuasiammal
Application No. 225/2015
v.
The District Collector & Ors (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Quarrying, Consent
Decision: Dismissed
Date:21 January, 2016

JUDGMENT

The applicants were engaged in the business of quarrying rough stone in the Thoppampalayam Village in Erode District and it had allegedly obtained necessary approvals after inspection, including the prior Environmental Clearance, subject to approval or No Objection Certificate to be issued by National Board for Wild Life ["the Board"].

The applicants had made necessary representation to the Board with all the records from competent authorities and the matter was pending with the said Board. Subsequently, the Board submitted that it sat once in 3 months to dispose of application, with the last sitting on 4th November 2015 and the next one around 4th February, 2016. In such case, the application was to be taken up then.

In view of the statement made by the Board, the current application was disposed of with a direction to the Board to take the applications filed by the applicant and decide in accordance with law.

M. Paul Rose & Anr.

v.

Ministry of Environment, Forests & Climate Change & Ors

Application No. 100/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: CRZ, Municipal Solid Waste, EIA, Consent
Decision: Dismissed
Date: 25 January, 2016

JUDGMENT

The applicant organization was aggrieved by the actions of the respondent Municipality which proposed to set up a municipal landfill facility in Kayalpattinam South village in violation of the CRZ Notification 1991, MSW Rules, 2000 and various other environmental norms. The applicants prayed for a permanent injunction to restrain the respondents from establishing any composting yard or bio-methanation plant or any solid wasteland fill in the disputed site and to restore its status quo by demolishing all constructions.

It was the case of the applicant that 2/3rd portion of the survey number had been declared as CRZ-1 and was prone to cyclones and storms and was also a breeding ground for fishes. Therefore, any such developmental activity would affect the ecological balance by virtue of large scale dumping of municipal waste. It was further stated that the site was in an Ecologically Sensitive Area and within 30 m of the Thamarabharani river estuary catering to the needs of nearly 10000 acres of agricultural lands and had rich biodiversity surrounded by dense mangrove vegetation. It was further alleged that the respondent Municipality had no right to proceed with the project since the State Pollution Control Board had rejected the proposal for landfill and compost yard and no consent/authorization had been obtained from Board under water and air act either. Further, no CRZ/EC under Entry 7 (i) of the Schedule to the EIA Notification, 2006 had been taken.

In response the Municipality submitted that it had applied for the NOC afresh after subdividing the site and obtaining a land use classification certificate from the Institute of Remote Sensing, Anna University to show that the land was not part of the CRZ. On this basis, the Municipality obtained the authorization under MSW Rules, 2000 and consent from the Board. It was further stated that the site was chosen as no alternate locations were available. The Board in response submitted that the provisions of the EIA Notification are attracted for a common municipal facility required by more than one municipal body however, the present project was only for a single local body. Further, it denied the presence of water body and mangrove vegetation at the site. The applicant on the other hand explained that the project contemplates bio-methanation plant and land filling yard which are components of the Solid waste management facility and therefore

required EC. It was further stated that the Municipality had misled the authorities by separately applying for the components in violation of the MSW rules, 2000.

Having heard the case of the applicants and the replies of the respondents, the Tribunal had to consider issues as to whether the scheme of setting up of the said facility required a valid EC under the EIA Notification, 2006 in addition to the authorization under the MSW Rules and Consent to Establish under the Air and Water Act, and whether the respondent Municipality had violated the provisions of the said regulations and whether the same could be allowed to proceed with the project.

The Tribunal relied upon the conclusions arrived at by the Institute of Remote Sensing which denied the presence of mangroves, mud flats and sand dunes within the site and clarified that the project site was not covered under the CRZ Notification, 2011. To interpret the meaning of the term Common Municipal waste management facility or municipal solid waste management, the Tribunal threw light on various provisions of the MSW Rules, 2000 and observed that the term "MSWMF" contemplated under item 7 (i) of the EIA Notification, 2006 could be termed as "Common MSWMF" if the municipal authority/operator combined all the facilities of collection, segregation, transportation, processing and disposal of the municipal solid wastes together. However, in the present case the municipal authority had applied separately for bio-methanation plant and municipal solid waste processing facility as the same were independent components which cannot be termed as "Common municipal solid waste management facility" and therefore did not attract the provisions of the EIA Notification, 2006. The Tribunal further considered the necessity of the project in public interest and accordingly dismissed the application.

S.P Muthuraman
v.
Union of India & Ors
Application No. 193/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S Rao
Keywords: Environment Clearance, NBWL Clearance
Decision: Dismissed
Date: 27 January, 2016

JUDGMENT

This application was filed against the Indian Oil Corporation Limited ('5th respondent'), which had proposed to setup a new LPG bottling plant at Tirunelvel, who had entered into a lease deed for the SIPCOT premises for 99 years with the project officer, SIPCOT.

The applicant had contended that there were reserved forests in the vicinity of the site and a deer sanctuary was located within a distance of one kilometre on one side of SIPCOT and for such reasons; the 5th respondent had been bound to obtain prior Environmental Clearance ('EC'), under the Environment Impact Assessment ('EIA') Notification, 2006, from the Ministry of Environment, Forests and Climate Change ('MoEFCC'). Instead the respondent applied and obtained consent to establish ('CTE') from the State Pollution Control Board and consent to operate, after acquiring the land and also started construction activities, which was in violation of statutory requirements.

The 5th respondent had averred that an application for EC had in fact been made, and it was found that prior EC was not required for the project and when they sought further clarification from the MoEFCC, they received no reply.

It was noted by the Hon'ble Tribunal both applications, one for the EC and the other for the approval of Forest Department were pending consideration and the 5th respondent had filed an undertaking to the effect that the activities of the proposed plant would be commissioned and commenced only after obtaining the EC. In the light of the above facts, the Hon'ble Tribunal decided to dispose of the application after referring to the aforementioned undertaking and directed the MoEFCC and National Board for Wildlife to examine and dispose the applications made by the 5th respondent in accordance with law.

M/s. SMR Aqua Food

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

R.A. No. 09/2015 in Application No. 220/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Review
Decision: Dismissed
Date:27 January, 2016

JUDGMENT

This was a review application following the initial order of the Hon'ble Tribunal directing the State Pollution Control Board ('Board') to initiate the shutting down of the 4th respondent's unit of packaged drinking water. The 4th respondent filed the present application and he contended that he was already enjoying an interim order from the Tribunal, passed in 2015. According to the earlier order, his unit was permitted to continue its operation with the conditions to carry out operations between 10 a.m. to 5 p.m., to use only up to 5 HP electricity supply, and the Pollution Control Board to monitor by referring to the meter readings.

The Board contended that the unit of the 4th respondent had been running without electricity and had been using a generator set, for which they did not have the consent from the Board, thereby making it unable for the Board to monitor the aforementioned units.

Considering the submission of both parties, the Tribunal observed that review applicant, i.e., the 4th respondent was not entitled to enjoy the benefits of the earlier order passed by the Tribunal and that there was no error apparent on the face of the record, following which, the review application failed and was dismissed.

Mrs. Suma R. Nayak
v.
Minister of Forest, Ecology & Environment & Ors
Application No. 159/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S Rao
Keywords: Deemed Forest, Limitation
Decision: Partly allowed
Date: 27 January, 2016

JUDGMENT

This application was filed against the commencement of the construction of new District Government Offices complex by the Deputy Commissioner ('DC') on the allotted land, which was categorized as a 'deemed forest' as per the *Godaverman case*, and hence attracted the Forest (Conservation) Act, 1980 and thus could not be utilized for the aforesaid purpose. According to the applicant, the proposed project threatened the existing flora and fauna, including several species of wildlife, thereby causing environmental degradation, ecological imbalance and damage. Therefore, the applicants sought directions to the DC to stop and abort the project for the DC office and for the Managing Director to take repossession of the disputed land.

The respondents averred that the application was barred by limitation as it was once already dismissed before the High Court of Karnataka ('HC'). However, the Tribunal reasoned that since the application involved a substantial question concerning environment, the point of limitation could be countenanced and was rejected. However, the application challenging allotment of land had already been rejected on merits by the HC, and hence could not be re-opened.

The Hon'ble Tribunal, observed that the respondents had not obtained permission from the Forest Department for the cutting and felling of trees for the said project as their application was pending. Therefore, the Tribunal directed the authorities to consider the classification of the land and pass suitable orders as required by law. The current application was allowed to the extent of restraining the DC from cutting and felling the trees till the time the necessary orders were passed in their favor with regard to the same.

With the above directions, the application was disposed of.

M/s. Gururaja Glass Works
v.
Karnataka State Pollution Control Board & Ors
Appeal No. 61/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S Rao
Keywords: Consent, Thippagondanahalli Reservoir (TGR) Notification
Decision: Allowed
Date: 27 January, 2016

JUDGMENT

A partnership firm, which was engaged in manufacture of glass, filed this appeal against the order of closure passed by the Karnataka State Pollution Control Board under the pretext that the unit fell under the Government of Karnataka's Thippagondanahalli Reservoir (TGR) Notification dated 18.11.2003

The firm was being run as a small-scale industry employing around 30 workers whose livelihood depended on this unit. The appellant approached the Karnataka Udyog Mitra for the purpose of infrastructural assistance for a project required to be considered under the State Level Single Window Clearance Committee ('SLSWCC'). Following the request for allotment of land for the industrial unit, the Karnataka Industrial Area Development Board considered the same and allotted 1-acre of land under a lease-cum-sale agreement. The appellant also obtained all the necessary licenses and consent for the commencement and operation of the unit.

The Karnataka Pollution Control Board ('KPCB') issued the TGR Notification on 18.11.2003, and when the unit had become operational in 2011, called upon the appellant to appear for a personal hearing with regard to the disposal of the application for consent for establishment. The appellant was refused consent to establish due to the allotted land falling under Zone-3 of the TGR notification. The appellant had averred before the Board that the land did not fall under the notification. However, they passed the impugned order of closure without issuance of a show-cause notice or asking for an explanation.

The Tribunal held that the impugned order could not be sustained, as the land did not fall under the Notification and the appellant had been granted consent by the SLSWCC after due consideration. The closure order was found to be factually incorrect and the impugned order was held to have been made with non-application of mind and hence was set aside.

Accordingly, the appeal was allowed.

M/s. Gotawat Industries
v.
Karnataka State Pollution Control Board & Ors
Appeal No. 62/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Consent, Thippagondanahalli Reservoir (TGR) Notification
Decision: Allowed
Date: 27 January, 2016

JUDGMENT

This appeal challenged the order of the Karnataka State Pollution Control Board ('1st respondent'), closing down the appellant's unit based on a 2003 notification issued by the Govt. of Karnataka's Thippagondanahalli Reservoir (TGR). The appellant was a partnership firm engaged in the business of manufacture of plastic threads and other allied products and was being run as a small-scale industry employing around 30 workers.

The appellant had approached the Karnataka Industrial Area Development Board for the allotment of land to put up a manufacturing unit. This was allotted to the appellant under a lease-cum-sale agreement and all necessary license and permissions were obtained for the commencement and operation of the unit. Inspection was carried out by a number of authorities including the Industries and Commerce Dept., the Electricity Board etc., who were satisfied that the unit didn't fall under the TGR notification issued by the Karnataka government on 18.11.2003 and allowed the unit to operate, starting in 2012. However, the 1st respondent issued a communication directing the appellant to come for a hearing wherein it was alleged that inspection done by a Senior Environmental Officer had revealed that the appellant's unit fell under Zone-3 of the TGR notification. The appellant denied the same but was served with an impugned order for closure under Section 33A of the Water Act and Rule 34 of the Karnataka State Board (Prevention and Control of Pollution and Water) Rules and Water (Prevention and Control of Pollution) Rules, 1976. Subsequently, the appellant had filed a memo stating that the TGR Notification had been withdrawn by the government. It was contended by the appellant that it had not been issued a show-cause notice, which had been a violation of natural justice.

The Tribunal observed that impugned order was unsustainable. The respondent had failed to note that the Appellant's unit did not fall under the TGR notification and that the appellant had been given all the necessary licenses to function. Therefore, by passing the impugned order the respondent had violated all canons of the principles of natural justice, due to which it should be set aside. The Tribunal also took note of the fact that according to the orders of the Karnataka High Court, the Notification issued on 18.11.2003 was still operational.
Hence, the order was set aside and the appeal was allowed.

Bhagat Singh Kinnar
v.
Union of India & Ors
Appeal No. 14/2011 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Dr. D.K. Agrawal, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Environment Clearance, Hydro Electric Project, Sustainable Development
Decision: Disposed
Date: 28 January 2016

JUDGMENT

The appellant, President of Rarang Shekethri Paryavaran Sraksha and Lokadhikar Samiti, filed an appeal seeking quashing of Environment Clearance ["EC"] granted to the integrated Kashang Hydro Electric Project (243 MW) situated in village Lippa, District Kinnaur in Himachal Pradesh. The project was proposed in four stages. The appellant's contention was that the EC was not granted in compliance of the provisions of the EIA Notification, 2006 and there had been utter disregard of the public consultation and appraisal process. Thus, it was his case that there would be great harm to the people and environment if the project was allowed to go ahead without a proper environment and social impact assessment.

The appellant contended that the public hearing was not conducted in a proper manner as neither the public hearing was done in the nearby affected villages nor the people were informed about the same which prevented the affected people from raising concerns, the draft EIA report or executive summary were not made available to the public prior to the hearing and also the minutes were recorded incorrectly and the proceedings were also not displayed in the Panchayat office. He also claimed that the project would cause adverse impacts upon the agricultural and horticultural lands of the villagers including the growth of chilgoza and pine trees and had not taken into consideration the water needs of the people which would be severely affected by the project. Apart from claiming various other affects, the appellant also stated that the project would also adversely impact the ecology of the Lippa Asrang wildlife sanctuary.

The questions before the tribunal for consideration were; first, whether the public consultation process had been done properly in accordance with the EIA Notification 2006; second, whether the EAC had considered all material issues relating to the project and its impact on the environment, the Lippa-Asrang Wildlife Sanctuary, the land requirement, muck disposal and disaster management, and the cumulative impact with other projects of the region, among other things, and third, whether the EC was in consonance with the principle of sustainable development and the precautionary principle.

With respect to the first issue, the tribunal observed that all the procedural aspects of the public consultation process was duly complied with which included prior notice of public hearing in newspapers, proceedings presided by Additional District Magistrate and executive summary of EIA/EMP report made available to the public. With regard to the process of impact of the project on the wildlife sanctuary, biodiversity, livelihood and environment, the tribunal observed that as stated by the respondents, the project was designed with great caution and duly investigated by the concerned authorities. It also recorded the submission made by the respondents that the traditional rights of the villagers had been settled and therefore did not require any further consideration. Based upon the submissions made by the respondent, the Tribunal took a contrasting view in the matter of deforestation and stated that the trees were over-exploited by the locals and required protection from the villagers instead. Relying upon the documents, the Tribunal observed that there has been a comprehensive R&R plan which would take care of the compensation and displacement aspects. It further observed that the sanctuary was at a distance from where the project was proposed and while its stage 4 would be 1.5 kms away from the sanctuary, the same would require necessary clearance from the National Board for Wildlife. Also, the biodiversity and conservation issues had been dealt with in the EC and specific conditions were imposed for its management and compensatory afforestation. Furthermore, with respect to environment flows, the tribunal found that the condition stipulated in the EC for 15% minimum flows was sufficient, and with respect to the impact on water springs, a proper management plan could be formulated for protection. Additionally, the tribunal took note of the fact that the project was situated on a tributary of river Satluj for which a comprehensive cumulative impact assessment study had already been initiated. The tribunal was also satisfied with the safeguards suggested by the EAC with respect to muck disposal. It also observed that the EAC had duly considered all the responses received during the public consultation. With respect to the third issue, the tribunal concluded that all the material safeguards had been incorporated into the EC in view of the precautionary principle, and that the project was in line with the principle of sustainable development, therefore there was no reason to interfere with the EC. However, a committee was constituted to ensure compliance/implementation of mitigative measures including review of EIA/EMP report and was directed to submit a compliance report within a period of two months before the Tribunal.

With the said directions, the application was disposed of.

Trupti Shah & Ors.
Vs.
The Chairman, Sardar Vallabhai Patel Rashtriya Ekta Trust & Ors.

Application No. 32/2015 (WZ)
M.A. No. 194/2015

Coram: Hon'ble Justice V.R Kingaonkar and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environment Clearance, Construction, Limitation
Decision: Dismissed
Date: 28th January 2016

JUDGMENT

The present application challenged the construction project of Statue of Unity, the foundation stone for which was laid on 31/10/2013, which was initiated by the State of Gujarat. The applicants contented that the project was in close proximity of Shoolpaneshwar Sanctuary and therefore permission from the National Board for Wild Life was necessary. The applicants also submitted that the built-up of the project was more than 20,000 sq.mtrs. for the reason which the project needed Environment Clearance (EC) under Entry No. 8(a) of the EIA Notification, 2006. It was submitted that no such EC was obtained by the State of Gujarat and thereby the impugned project was open to challenge as it suffered from basic illegality. Further, it was submitted that the Social Impact Assessment was not done following which the project was open to challenge on the grounds of illegality and the adverse impact on water bodies, livelihood of humans beings and biodiversity.

In reply to the application, the respondents opposed the application on grounds of limitation by way of M.A. No. 194 of 2015. It was also contended that the main application was liable to be dismissed as the cause of action was not disclosed. Further, it was submitted that the applicants had already raised their grievance via e-mail in November 2013 and therefore it seemed unlikely on their part to have consciously pushed the alleged cause of action for such a long period of time.

Addressing the core issue of whether the application was within the prescribed period of limitation, the applicants argued that the cause of action arose on the date the applicants confirmed their suspicion that the impugned project was covered under the EIA Notification, 2006. The Tribunal noted that the applicants wanted to withdraw the main application at the time of hearing subject to certain conditions which also included that the project design should be furnished to them. The Tribunal rejected this prayer on the ground that it suffered from illegality and the same was therefore not permitted as precondition for withdrawal. The Tribunal also noted that if this prayer of the applicants was to be accepted then apprehended violation of the intellectual property might occur. Coming back to the issue of limitation, the applicants contended that the period of

limitation commenced from the date when the cause of action for such dispute arose. In doing so, the counsel relied on the decision in *Amit Maru Vs. Secretary, MoEF (M.A. No. 65/2014 in Application No. 13/2014).* However, the Tribunal reasoned that the decision in *Amit Maru* did not apply to the current case and that it was still under challenge before the High Court. Further, the Tribunal opined that the applicants were aware about the construction of the project in November 2013 for which reason the main application was barred by limitation. The Tribunal also stated that the cause of action was to be decided by looking at the cumulative effect of all the facts and circumstances of the case instead of only one strand of the given facts.

Accordingly, M.A. No.194/2015 was allowed and Application No. 32/2015 was dismissed with no order as to costs.

Tmt. Geetha
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No. 289 of 2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S Rao
Keywords: Air Pollution, Noise Pollution
Decision: Partly Allowed
Date: 28 January, 2016

JUDGMENT

The application was filed before the concerned bench, seeking relief against the alleged "unfair" sealing of a flourmill operated by the applicant in a residential area, acquired under a lease agreement with one of the respondents, hereinafter called the landlord.

The Tribunal heard pleadings and replies of each party and found that the landlord, that is, the 5th respondent had filed an application for eviction against the applicant due to excessive noise pollution, leading to complaints to the Pollution Control Board from other residents as well.It also found that an inspection was made by the concerned District Environment Engineer ('DEE') who found that the noise levels exceeded the permissible limit of 55dB for residential areas and that the applicant had not taken any noise control and air pollution control measures.

Moreover, the Tribunal observed that instead of taking any action against the applicant, the Pollution Control Board communicated the matter to the Corporation of Chennai, which in turn proceeded to seal the Unit and no further action was taken to instruct the applicant to control the noise and air pollution levels, despite the inspection and serving of a Show Cause Notice.

After appraisement of the facts and circumstances, the DEE concerned was instructed to make a fresh inspection of the premises, verify the activities permitted in residential areas and the upper limit of the capacity of the electric motor in accordance with the Second Master Plan and suggest measures to reduce the noise level and air pollution with a direction to carry out another inspection within on month, thereafter. Strict instructions were given to the applicant to comply with the suggested measures based on which the DEE would file a report in that regard.

Consequently, the application was disposed of, without costs.

Jagannath Mane
v.
Union of India & Ors
MA No. 673 & 828 of 2015
In
Appeal No. 65 of 2015 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Delay condonation, Limitation
Decision: Dismissed
Date: 29 January, 2016

JUDGMENT

The appeal sought quashing of the Environmental Clearances ["ECs"] granted for the purpose of carrying out stone mining to the private respondents in village Nahalda, district Khandwa. Since there was delay in filing the appeal beyond the prescribed period, the appellant had filed condonation for delay which was considered in the present judgment.

It was the case of the appellant that initially he had approached the Tribunal (OA No. 85 of 2014) challenging the illegal mining and damage to forest areas by the respondents. Subsequently, upon grant of Environment Clearance to the respondents, he mistakenly moved a MA in the same application which was later corrected by filing the present appeal/application. Thus, the appellant contended that the delay happened due to time spent in the previous proceedings which was bonafide and thus sought condonation of delay relying upon the principle of section 14 of Limitation Act wherein time taken in prosecuting bonafide and diligent proceedings which due to defect in jurisdiction or other cause of like nature cannot be entertained by the court, stands excluded.

On the other hand, it was the case of the respondent that the delay of more than 60 days in preferring the appeal could not be condoned as per the provisions of Section 16 of the National Green Tribunal Act, as well as the decision of the Tribunal in Save Mon Region Federation v. Union of India. As per the respondent, the limitation began to run from 05/01/15, when the appellant obtained copy of the EC under RTI. However, the present appeal (initially filed as OA No 119 of 2015, later converted to appeal) was filed on 15/04/2015 i.e much later after expiry of the period granted under the Act. It was further contended that the tribunal cannot stretch the period of limitation prescribed under the special enactment by taking aid of the provisions under the Limitation Act, 1963.

The tribunal had to decide that while applying the Principle of Section 14 of the Limitation Act, whether the exclusion of time taken in prosecuting proceedings was intended by the legislature in making the specific provision prescribing the limitation and for condonation of delay in Section 16(2), and whether the previous proceedings were

prosecuted with due diligence in good faith. The tribunal while relying upon various judgements of the Supreme Court held that as per Section 16(h) of the NGT Act, there's no scope for confusion with respect to how to throw challenge to an EC by way of an appeal to the tribunal; and therefore the facts suggest that the appellant was negligent.

Furthermore, the tribunal held that time is a material dimension of environmental justice, and a delicate balance between necessary development and environment is sustained without any unwarranted loss of time in decision making, particularly with respect to the grant of ECs. It was also observed that the decision to grant EC is based on an informed decision taken upon professedly true and correct facts, while providing for environmental safeguards, as a consequence of which as per the proviso to Section 16, the legislature intended that appeals of the nature challenging ECs not be entertained beyond the restrictive period prescribed in the section.

Therefore, the application was dismissed as the tribunal concluded that the period of limitation prescribed in Section 16 of the NGT Act which specifically phrases "not exceeding sixty days" could not be stretched even by taking aid of the Principles under Section 14 of the Limitation Act, 1963.

Randhir Singh & Ors
v.
State of Haryana & Ors
Original Application No. 182/2013 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Ground water, Limitation, Maintainability
Decision: Dismissed
Date: 29 January 2016

JUDGMENT

The application was filed against the respondents to restrain them from carrying on construction activity for a Grain/Molasses Distillery Unit in village Jundla, District Karnal and direct its relocation. The applicant also objected to the grant of NOC by the CGWA. It was the case of the applicants that heavy extraction of ground water for the project would affect already depleted resources, the environment, and agriculture – which was the primary source of income to the locals. It was further argued that burning of massive quantity of rice husk was leading to air pollution, and the project was too close to the Khai Canal, which had religious and historical meaning for the villagers. On the other hand, it was the case of the respondent that the application was time barred and not maintainable under Sections 14 and 15 of the NGT Act. It was argued by the respondent that as per Section 3(ii), (v) of the Environment (Protection) Act, Environment Clearance Regulations, 2006 and Section 16(h) of the NGT Act, EC is site specific, and therefore application for relocation of an industry to which EC has been duly granted, without any challenge to the EC is not maintainable under Section 14 and 15 of the NGT Act. The basis for this was the contention that the three sections 14, 15, and 16 operate in separate fields, and that where law requires thing to be done in a particular manner, it shall be done in that manner alone and in no other manner.

A dispute arose regarding the application of Section 15 of the Act. As per the applicant, Section 15(a) is not attracted only when environmental damage is caused, but also where environmental danger is about to be caused – as the term victims would include potential victims, as such interpretation serves the object and purpose of the act, as well as the precautionary principle. However, the tribunal rejected this argument, holding that there is no ambiguity in Section 15, which does not apply to cases of prospective or immediate danger such as the present one. The tribunal further held that the application would be treated as one under Section 14 of the NGT Act on the ground of depletion of ground water, and not an appeal under Section 16(h), as question relating to grant of NOC by CGWA was a question relating to enforcement of legal right relating to environment created on account of grant of such permission, and therefore arises out of the implementation of the Environment Protection Act (1986), as CGWA is a creature thereof.

The question before the tribunal was whether challenge to the NOC was barred by the period of limitation provided in Section 14 of the NGT Act. The tribunal acknowledged that no straightjacket formula exists as to when the cause of action first arose, but has to be determined considering overall facts and circumstances. The appellant contested that the expression "knowledge" under Section 14 must be understood in the same manner as the phrase "on which the order or decision or direction or determination is communicated to him" as used in Section 16. 'Communication' as per Medha Patkar & Ors v. MoEF & Ors, was interpreted to mean complete knowledge of ingredients and grounds required under law to challenge an order. The tribunal rejected this argument on the ground that a case under Section 14 is not an appeal, it is a distinct category of remedy, and therefore the legislature did not intend to make use of the phrasing of Section 16 in relation to the accrual of cause of action under Section 14.

It was held that the limitation under Section 14(3) begins to run from the date on which the factual situation arose which entitles a person to obtain from the court a remedy against another. Thereby, the limitation period was found to be exhausted. The alternative contention of the applicant was that the period spent before the Punjab and Haryana High Court must be excluded from the period of limitation in terms of Section 14 of the Limitation Act. The tribunal rejected this submission on the ground that Section 14 of the Limitation Act does not apply to the provisions of the NGT Act, as special periods of limitation are provided thereunder, and the limitation statute does not apply to proceedings before Quasi-Judicial Tribunals. In any case, the tribunal held that even when applying the principle of Section 14 of the Limitation Act, time period could be excluded only when proceedings were pending in good faith before a wrong forum, which was not the case. The tribunal noted that the purpose behind enactment of the NGT Act was to ensure speedy dispensation of justice in environment related cases, and therefore the periods of limitation provided under the act have to be interpreted in a restrictive manner. The application was thereby dismissed.

Anil Kumar Singh
Vs.
The State of Jharkhand & Ors.
Original Application No. 45/2014 (EZ)

Coram: Justice Pratap Kumar Ray, Prof. (Dr.) P.C Mishra
Keywords: Forest Conservation, Illegal afforestation
Decision: Partly Allowed
Date: 29 January, 2016

JUDGMENT

The application was made by a Range Forest Officer of district Hazaribagh, Jharkhand bringing into notice the violations of the provisions of National Forest Policy 1982 and Forests Conservation Act, 1980 by the officers of the Forest Department and seeking direction for implementation of forestry works as per the working plan approved by the Government of India and in compliance with the orders passed by the State Government.

In this case, the Chief Conservator of Forest, Bihar, had issued an office order constituting regional committees with a direction that these committees would be the final deciding authorities for forest related plantation work to be undertaken at the decided site. This order was amended by the PCCF, Jharkhand with a direction that the plantation works should only conform to the working plan approved by the Govt. of India and that no Divisional Forest Officer was allowed to start afforestation work without prior site approval of the respective committees. The order was further amended to fix financial and physical targets for each forest division.

The contention of the applicant was that although the sites for Soil conservation-cum-afforestation schemes were finalized for plantation on degraded forests in different forest divisions. However, the physical targets were not distributed equitably between the divisions which was the basic policy of the Govt. of Jharkand. Further, he also questioned the honesty of Forest Department, stating that the funds were being allotted to the Social Forestry wing for plantation works inside notified forest areas which is contrary to the mandate wherein plantation works are to be executed outside the notified forest area. The applicant alleged that the same was done for personal gains and accused one Divisional Forest Officer for violation of the office orders for the sole motive of getting illegal gratification.

In pursuance of the said contentions, the applicant prayed for equitable distribution of forestry works between the forest ranges, compliance of the Government orders, fixing of responsibility amongst officers for violating the provisions of the working plans, National Forest Policy 1982 and Forest Conservation Act, 1980, to take disciplinary actions against disobedient officers and finally, order to ensure forestry working only in consonance with the provisions of the working plan approved by the Govt. of India.

In reply to the same, the State challenged the maintainability of the application by filing a separate MA No. 25/2015/EZ on the basis that 1) no breach of environmental law was asserted with any supporting documents and 2) since the applicant was a State Govt. servant, he was not legally entitled to file the application assailing environmental law issues under the Forest Conservation Act, 1980 before the Tribunal.

However, the Tribunal dismissed the said application filed by the State rendering it devoid of any merit stating that environment is available as a constitutional right to all citizens and the status of the applicant as a Govt. servant did not impose any restriction on him to exercise his right to seek remedy against environmental breach. It also observed that the Tribunal only had the jurisdiction on the matter of violation of Forest Conservation Act, 1980.

The Tribunal concluded that the Govt. of India had the powers under the Forest Conservation Act 1980 to prescribe working plans and provide for regeneration, protection and development of forests, which were to be strictly and mandatorily complied with. It further stated that any deviation in the working plan would require prior approval of competent authorities and in the absence of such approval, the provision of Forest Conservation Act 1980 and the direction of the Apex Court were mandatory.

Consequently, the OA was disposed of without costs and the applicant was given the liberty to approach the Tribunal in the event of any violation of the approval order of the Union Govt. or the direction of the Apex Court.

Suo Motu Application
v.
The State of Tamil Nadu & Ors
Application No. 204/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Waste disposal, Beaches
Decision: Disposed
Date:29 January, 2016

JUDGMENT

This matter was filed as *suo moto* wherein the Tribunal took cognizance of the same based on a newspaper report related to garbage and other wastes in and around Elliots Beach and Pallavakkam Beach, which had not been removed by the authorities, thereby causing environmental hazards.

The Corporation of Chennai filed a Status report in which it narrated the steps being taken in the disputed area and the strict direction given to avoid slackness in the conservancy activities. Following this report, the Tribunal was satisfied that adequate steps were being taken for the purpose of removal of garbage and that adequate laborers had been employed for carrying out these activities. Therefore, it only directed the respondents to continue the said efforts and act according to the reports submitted to the Tribunal.

Recording the above reports, the application was closed with the said direction.

Suo Motu
Based on News Items of Investigation in "Packaged Drinking Water Units in Chennai City"
v.
The Commissioner, Corporation of Chennai & Ors.
Application no. 40/2013
South India Packaged Drinking Water Manufacturer's Association
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 94/2013
Shanmuga Aqua Industries
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 96/2013
M/s. Sudeshi Associates
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 100/2013
&
M. A. No: 198 OF 2014
M/s. Anbu Mineral Water
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 158/2013
M/s. Sri Guru Water
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 159/2013
M/s. Pure One Products
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 160/2013
M/s. Karunya Enterprises
v.
Tamil Nadu Pollution Control Board & Ors.
Application no. 170/2013
M/s. Aqua Roche, Packaged Drinking Water Company
v.
The Commisioner, Corporation of Chennai & Ors.
Application no. 318/2013
T.J.S.Enterprises
v.
The Chief Engineer, Public Works Department/WRD & Ors.

Application no. 7/2014
M/s. Varunas Heavenly Water
v.
The Chief Engineer, Public Works Department/WRD & Ors.
Application no. 14/2014
M/s. Rain Drops RO Water Pvt. Ltd.
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 15/2014
M/s. Bhatra Packaged Drinking Water
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 16/2014
M/s. Om Namo Narayana Industries
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 17/2014
M/s. Sri Vari Aqua Minerals
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 18/2014
M/s. Sri Sadguru Sai Minerals
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 19/2014
M/s. Ramya Minerals
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 20/2014
Sri Amman Mineral Waters Pvt. Ltd.
v.
The Chairman, Tamil Nadu Pollution Control Board &Ors
Application no. 28/2014
Smt. G. Priya, W/o. S.G. Gopi
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 30/2014
Selvam Aqua Farm
v.
The Chief Engineer, WRO, Public Works Department & Ors
Application no. 44/2014
M/s. Akshaya Minerals
v.

The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 46/2014
M/s. Maris Aqua Products India Pvt. Ltd
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 47/2014
M/s.Niagara Aqua Farms
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 48/2014
M/s. Gayathri Minerals
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 49/2014
M/s. K.K. Aqua Farm
v.
The Chief Engineer, Public Works Department/ State WRD & Ors
Application no. 50/2014
M/s. Repute Infotec &Entrerprises Ltd.
v.
The Member Secretary, Central Ground Water Authority & Ors
Application no. 51/2014
M/s. Meenakshi Aqua Products
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 52/2014
M/s. Triton Aquatic Industry
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 53/2014
M/s. Sri Vishnu Aqua Farm
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 54/2014
M/s. Sree Narayana Beverage
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application no. 56/2014
M/s. Abhistar Aqua Farms
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 57/2014
J.P.R. Aqua Farm

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 58/2014

M/s. K.C. Food Products

v.

The District Environmental Engineer & Ors.

Application no. 62/2014

M/s. Amirtha Agro Enterprises Pvt. Ltd

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 64/2014

M/s. Hari's Aqua Product

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 65/2014

M/s. Krishna Aqua Care

v.

The Chairman Tamil Nadu Pollution Control Board & Ors.

Application no. 66/2014

M/s. Vaigai Aqua System

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 67/2014

Sibba Foods

v.

The Govt. Of Tamil Nadu & Ors

Application no. 68/2014

M/s. Surabi Aqua

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 70/2014

M/s. K. Regupathi Ammal Water Systems

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 71/2014

P.R. Thanigaivelu

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 72/2014

M/s. Nova Minerals

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 74/2014

M/s. Dreams Associates

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 75/2014

M/s .Babuji & Beverages

v.

The District Environmental Engineer, Tamil Nadu Pollution Control Board & Ors

Application no. 82/2014

M/s PSD Aqua & Anr.

v.

The District Environmental Engineer, Tamil Nadu Pollution Control Board & Ors

Application no. 88/2014

Selvam Aqua Tech

v.

The Chief Engineer, WRO, PWD & Ors

Application no. 94/2014

S.R. Aqua Farm

v.

The Chief Engineer, WRO, PWD & Ors

Application no. 95/2014

M/s Green Valley's Minerals

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 104/2014

Tharag Aqua Products

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 124/2014 & 125/2014

M/s Kothari Biotech Limited

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application no. 127/2014

M/s. Sinthuja Aqua Products

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 143/2014

Dr. Thanga Aqua Industries

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 144/2014

M/s.Sakthi Packaged Water

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 145/2014
M/s. Sonal Aqua Farm
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 146/2014
Blue Square Industries & Ors.
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 180/2014
Florence Enterprises
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 181/2014
Pandian Aqua Products & Ors.
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 182/2014
Freeze Packaged Drinking Water
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 183/2014
Guru Minerals
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 184/2014
ZULFI Aqua Farms
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 185/2014
Aaditya Enterprises & Ors.
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 186/2014
Sri Sai Durga Aqua
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 187/2014
Thirumalai Aqua Minerals & Ors
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 188/2014
M/s Suganthi & Company
v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 189/2014
Vikaashni Industries & Ors
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 190/2014
M/s.VJP Aqua Farms
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 192/2014 & M.A. No. 260/2014
M/s Shree Senthur Engineers &Consultant Pvt. Ltd
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 193/2014
M/s Sakthi Aqua
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 194/2014
R.K.P. Corporation
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 195/2014
M/s. KSNR Aqua Industries
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 198/2014
M/s. Harsha Aqua Farm
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 197/2014
M/s Arul Aqua Fresh
v.
The Chief Engineer, Public Works Department & Ors
Application no. 200/2014
M/s. SAP Group of Company
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 202/2014
M/s. Phoenix Food Products
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application no. 203/2014
Jaango Foods

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 204/2014

Karpaga Vinayaga Aqua Industries

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 205/2014 & M.A. NO. 252/2014

S.R. Aqua Solution

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 206/2014

ARG Enterprises

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 208/2014 & M.A.NO. 254/2014

M/s. Mass Aqua Farms

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 213/2014

M/s. Mayil Aqua Products

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 215/2014

M/s. Aachi Industries

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 217/2014

M/s. Modern Distilled Water and Acid Supply Co.

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 221/2014

M/s. R.R. Drinking Water

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 224/2014 & M.A. No.129 OF 2015

A.S. Water Technology

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application no. 231/2014

M/s. D.L. Aqua Farm Private Ltd.

v.

Tamil Nadu Pollution Control Board & Ors.

Application no. 234/2014

M/s. Abhinav Aqua

v.

The Chief Engineer, Public Works Department & Ors

Application no. 246/2014

Aqua King

v.

The Chief Engineer, Public Works Department & Ors

Application no. 257/2014

Pamban Aqua Products Pvt. Ltd.

v.

The Chief Engineer, PWD & Anr.

Application no. 259/2014

JSM Aqua Product

v.

The Chief Engineer, PWD & Anr.

Application no. 260/2014

Elite Extractz

v.

The Chief Engineer, PWD & Anr.

Application no. 272/2014

Sabari Water Plant

v.

Tamil Nadu Pollution Control Board & Ors.

Application no. 301/2014

Varasidhi Lakshmi Ganapathy Mineral Water

v.

Tamil Nadu Pollution Control Board & Ors.

Application no. 77/2015

M/s. Artisiyan Spring

v.

Tamil Nadu Pollution Control Board & Ors.

Application no. 07/2014

M/s. Shree Balaji Acqua Enterprises

v.

Tamil Nadu Pollution Control Board & Ors.

Appeal no. 45/2014

M/s. Sri.Dhanalakshmi Minerals

v.

Tamil Nadu Pollution Control Board & Ors.

Appeal no. 46/2014

M/s. Repute Infotec & Enterprises Ltd

v.

Tamil Nadu Pollution Control Board & Ors.

Appeal no. 47/2014
M/s. Chennai Machines Pvt. Ltd.
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 49/2014
Abu Food Products
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 51/2014
Kavitha Mineral Water
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 52/2014
M/s. Maruthi Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 53/2014
Virtcham Water Products
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 54/2014
C.T.R. Minerals
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 56/2014
G.R.K. Minerals
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 57/2014
Saraswathi Bangajam RO Packaging Water Plant
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 58/2014
Maruthi Food Products
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 59/2014
U.N. Enterprises
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 61/2014
M/s. Seeni SSA Aqua Farm Division
v.

Tamil Nadu Pollution Control Board & Ors.
Appeal no. 62/2014
Sri Ragavendra Aqua Tech
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 64/2014
Mettur Water
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 65/2014
P.S.K. Agro Beverages
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 66/2014
M/s. Sree Ayappa Water Suppliers
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 73/2014
M/s. Sakthi Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 74/2014
M/s. ASK Water Suppliers
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 75/2014
M/s. Priya Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 76/2014
M/s. Shyam Sundar Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 77/2014
M/s. Gokul Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 78/2014
M/s. Shyam Sundar Water Supply
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal no. 79/2014
JA & Rish Aqua Company

v.

Tamil Nadu Pollution Control Board & Ors.

Review Application no. 01/2014

In

Application no. 40/2013

M/s.T.S. Agencies & Ors.

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 02/2014

In

Application no. 40/2013

M/s. Sri Amman Foods & Ors.

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 03/2014

In

Application no. 40/2013

M/s. Vasutha Industries

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 04/2014

In

Application no. 40/2013

M/s. Mahesh Aqua

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors.

Review Application no. 05/2014

In

Application no. 40/2013

M/s. Jeevan Water Plant

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors.

Review Application no. 06/2014

In

Application no. 40/2013

M/s. G.P.R. Mineral Water

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors.

Review Application no. 07/2014

In

Application no. 40/2013

M/s. Jasmine Aqua Industries

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 08/2014
In
Application no. 40/2013
M/s. Rajasri Aqua Farm
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 09/2014
In
Application no. 40/2013
M/s. Spadigam Mineral Water
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 10/2014
In
Application no. 40/2013
M/s. A.T.S Aqua Systems Pvt Ltd
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 11/2014
In
Application no. 40/2013
M/s. Natural Lovey Springs Water
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 12/2014
In
Application no. 40/2013
M/s. Friends Products
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.
Review Application no. 13/2014
In
Application no. 40/2013
M/s. Trust Aqua
v.
The Chief Engineer, Public Works Department
Review Application no. 14/2014
In
Application no. 40/2013
Mrs. Chandra Jeganathan
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors.

Review Application no. 15/2014

In

Application no. 40/2013

M/s. Athanur Enterprises

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 16/2014

In

Application no. 40/2013

Sree Harimangalas Pristine Aqua

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors.

Review Application no. 17/2014

In

Application no. 40/2013

M/s. Then Aqua & Beverages & Ors

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 18/2014

In

Application no. 40/2013

M/s. Jay Aqua Minerals & Ors

v.

The Chief Engineer, Public Works Department & Ors.

Review Application no. 19/2014

In

Application no. 40/2013

Bharathiraja Water Suppliers & Ors

v.

The Commissioner, Corporation of Chennai & Ors.

Miscellaneous Application no. 13/2014

In

Application no. 40/2013

M/s. Sri Amaravathi Waters & Ors.

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors

Miscellaneous Application no. 17/2014

In

Application no. 40/2013

M/s. Sri Ganesa Aqua Farms

The Chairman, Tamil Nadu State Pollution Control Board & Ors

Miscellaneous Application no. 18/2014

In

Application no. 40/2013
Durai Lakshmi & Co. & Ors
v.
The Comissioner, Corporation of Chennai & Ors.
Miscellaneous Application no. 19/2014
In
Application no. 40/2013
SMS Packaged Drinking Water & Ors.
v.
The Comissioner, Corporation of Chennai & Ors.
Miscellaneous Application no. 29/2014
In
Application no. 40/2013
Perfect Packaged Drinking Water & Ors
v.
The Comissioner, Corporation of Chennai & Ors.
Miscellaneous Application no. 31/2014
In
Application no. 40/2013
Sakthi Aqua Tech & ors.
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 35/2014
In
Application no. 40/2013
M/s. Durga Minerals & Ors
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 44/2014
In
Application no. 40/2013
Laxmi Systems
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 47/2014
In
Application no. 40/2013
Ram Foods & Beverages
v.
The District Environmental Engineer, Tamilnadu Pollution Control Board & Ors
Miscellaneous Application no. 48/2014
In
Application no. 40/2013

Sri Krishna Aqua Packaged Drinking Water
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 63/2014
In
Application no. 40/2013
Nikki Aqua Products
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 71/2014
In
Application no. 40/2013
M/s. Indira Aqua Farms
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 73/2014
In
Application no. 40/2013
Seven Star Mineral Water
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Miscellaneous Application no. 166/2014
In
Application no. 40/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S.Rao
Keywords: Packaged drinking water, Consent
Decision: Disposed
Date: 29 January, 2016

JUDGMENT

This matter was taken up as *suo moto* by the Tribunal taking cognizance of the issue in the main application, based on news item published in 'The Hindu' dated 05.03.2013 about a check conducted by the CBI and BIS of packaged drinking water units in Chennai where violations of basic safety parameters were found.

The application covered all the packaged drinking water units in the city of Chennai and subsequently also included the association comprising of 869 members manufacturing packaged drinking water units in the State of Tamil Nadu. On the basis of the water quality test and regular inspections made by the Board, certain units were allowed to carry on its functions. However, some of the units were shut down completely for not having valid CTO and CTE by the Pollution Control Board. On the report filed by the Board, the Tribunal found 855 units out of total of 997 packaged drinking water units operating

without consent in the State of Tamil Nadu. It was also brought to the notice of the Tribunal that though the units had applied for consent, the same were returned by the Board in view of the proceedings before the High Court wherein GO No. 52 which imposed ban on extraction of water in over exploited area was under challenge. The Tribunal noted that though a ban was imposed however units falling in the said category were allowed to operate after obtaining NOC for purchase and transfer of water from the safe area. Thus, the Tribunal directed the official respondents to consider the applications of the said units and proceed with the grant of NOC subject to certain conditions.

The Tribunal dealt with the applications made by the unit owners and the submission of the government departments and passed the directions for (1) Closure of the units operating without valid permissions (2) Permission to operate granted to the units only for protection of the membrane and for maintenance of the machinery (3) Units allowed to operate for limited hours for public necessity and also considering the livelihood of the employees. The Tribunal taking note of the pendency of the application for three long years disposed of the matter with directions to the District Environment Engineer to monitor and ensure strict compliance of the conditions imposed on all the units and initiate action against the violators.

V. Prabhakaran
v.
The Commissioner (Corporation of Chennai) & Others.
Application No. 140 of 2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Riverbank, Waste Burning
Decision: Dismissed
Date: 29 January 2016

JUDGMENT

This application was filed by a resident of Nolambur Village (also the Vice President of the Panchayat) seeking the relocation of a dumping yard entrenched on the banks of River Coovum (Ward No. 144, Zone XI), created by the Corporation of Chennai. Furthermore, the applicant sought directions against the Corporation to take corrective measures to reclaim the riverbank in order to avoid flooding during the monsoon season. This complaint arose as a result of extensive encroachment made by dishonest elements on the riverbank and the imminent risk of health hazards affecting nearby residents due to heavy smoke arising from burning waste material in the dumping yard.

Addressing the residents' concern, the Corporation confirmed that the dumping yard in Zone XI was only a temporary measure until an alternative site was found. In reply to the application, the Corporation also filed an affidavit stating that they were carrying out the requisite measures to transfer all the garbage collected in the area to another dumping ground in Pergundi vide their fleet of vehicles and compactors. It further stated that lack of management of garbage in affected area near River Coovum would only arise in the event of mechanical failure of their personal vehicles.

Having considered the aforementioned reply to the application, the Tribunal clarified that the Corporation must continue the decided arrangement of directly transferring the garbage to Pergundi. It also stated that any failure of such arrangement would require the Corporation to identify an alternative site for the same and in any event, the village of Nolambur would not be used as a dumping ground.

Accordingly, the application was closed without costs, allowing the applicant to approach the bench in order to get further directions in case of any failure on the part of the Corporation.

Puran Chand & Anr
v.
State of Himachal Pradesh & Ors
Appeal No. 48/2012
And
Court on its own motion
v.
State of H.P
O.A. Nos. 39/2012, 40/2012/ 41/ 2012
And
Durga Ram Sharma
v.
MoEF & Ors.
Appeal No. 06 of 2011 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Environment Clearance, Forest Clearance, Principle of Sustainable Development
Decision: Disposed
Date: 2 February 2016

JUDGMENT

The matter was in respect to the Renuka dam project which was a storage project requiring construction of 148 m high rock fill dam across river Giri, a tributary of river Yamuna in the Sirmour District of Himachal Pradesh. The project was envisaged to meet drinking water needs of NCT Delhi and other Yamuna basin states (HP, UP, Haryana, Rajasthan). It also envisaged production of power generation. The project also involved diversion of 49 hectares of forest land from Renuka Wildlife Sanctuary.

Appeal No. 06 of 2011 was filed against the Environment Clearance dated 23.10.2009 granted by the MoEFCC, the appeal was initially preferred before the National Environment Appellate Authority (NEAA) but later transferred to the Tribunal upon its constitution. Appeal No. 48 of 2012 was filed before the High Court for quashing of the EC and declaring public hearing and EIA illegal. OA No's 39,40,41 of 2012 were filed before the High Court challenging the land acquisition proceedings on account of the fact that the project had not obtained the required Forest Clearance. All these matters were transferred to the Tribunal in view of the SC judgment passed in *Bhopal Gas Peedith Mahila Udyog Sangathan & Ors vs UOI & Ors*. The project was challenged on the grounds of inadequate EIA, no assessment of the socio economic impacts, inconsistency in the total land area, no assessment of large scale displacement, no consideration of minimum environmental flow stipulated in the MOU signed by all the five states, no assessment of the competitive uses of water extracted from the river, no consideration of the reduction

in water flow due to climate change impacts, no assessment of full submergence impact of the dam, no consideration of the impacts on endemic fishes, proceedings of land acquisition initiated without obtaining Forest Clearance for diversion of 901 hectares of forest land. In addition to this, it was stated that the public hearing was a sham since the public was not informed about the implications of the project. Thus, the applicant argued that the EC process was vitiated since there was deliberate concealment of material data/submission of misleading information by the project proponent which rendered the entire process of EC illegal.

The MoEFCC responded to the application stating that the application for the project proposal was initially submitted before it in the year 1999. However, the same was returned and subsequently re-submitted and appraised only after the approval of the SC in respect of the diversion of 49 hectares of forest land falling within the Renuka Wildlife Sanctuary. The Ministry stated that it looked into various aspects including payment of compensation benefits to the affected people under the R&R scheme. As per the HPPCB, the public hearing was undertaken following the norms of the EIA Notification, 2006. Denying all allegations raised by the applicant, the project proponent HPPCL contented that the project had been declared a project of 'national importance' since the same would benefit a large part of the population and huge investment had already been made for its execution.

To determine the issues involved in the matter, the tribunal first took note of the procedure for granting EC in the EIA Regulations, 2006, as per which the application for grant of EC is to be made by the project proponent ["PP"] in form 1/1A after the project sites have been identified, but before commencing construction. Such application may be rejected by the regulatory authority on the recommendation of the Expert Appraisal Committee ["EAC"] at the scoping stage. Further, regulation 7 stipulates that the terms of reference ["ToR"] be conveyed to the PP by the EAC, that the process of public consultation must provide for public hearing as well as obtaining of responses from concerned persons, all of which must be addressed by the PP in the draft EIA/in a supplementary report thereto. Regulation 7(IV) provided the process of appraisal which entailed scrutiny by the EAC of the application and other documents in a transparent manner, and on the basis of this the EAC must make recommendations to the regulatory authority concerned for grant of the EC. Under Regulation 8, the regulatory authority considers these recommendations (usually they are agreed with, but in the alternative reasons for disagreement have to be specified) and finally responds to the applicant. Finally, under Regulation 8(iv) deliberate concealment/submission of false data which is material to any stage of the application is defined as grounds for rejection/cancellation of EC. After explaining in detail the process for grant of EC, the tribunal referred to Articles 48A and 51(A)(g) to impress upon the duty to balance social and economic needs with environmental considerations. It was held that the importance of procedures for obtaining EC was not to be taken lightly, and unless land required for the project is clearly specified, identity of the affected persons cannot be determined – leading to lacunae in the scoping and appraisal processes.

The tribunal accepted the contention of the applicant that there had been inconsistent and contradictory disclosure of the land requirement for the project, from the stage of submission of application for ToR to the stage at which the EC was granted. Since relevant material such as the total land requirement and the total land that would potentially be submerged was not mentioned in the EIA and EMP report, the tribunal concluded that the appraisal of the project was not sufficient.

In the same breath, the tribunal referred to the decision of the Supreme Court wherein the project had been declared one of national importance as "was not to be killed by any kind of apathy or indifference" (Against the decision of the High Court of Himachal Pradesh in the land acquisition proceedings, the State of HP preferred appeal before the SC in 2015 which appreciated the project proposal and directed the State to go ahead with the same without any further delay) Therefore, considering this importance and the exorbitant expenditure on the project, the prayer to quash the EC was rejected by the tribunal. However, in light of the principle of sustainable development, the tribunal issued certain directions to ensure that degradation of the environment did not take place. As per these directions, a committee was constituted to report on whether there was a comprehensive resettlement and rehabilitation policy in view of the discrepancy in the land requirement of the project, if modifications to the project were needed in the interest of the ecology, to assess the impacts of loss of forest lands, to make recommendation on the minimum environmental flow, to check the compliance of the conditions imposed by NBWL and SC with respect to the diversion of forest land from the Sanctuary and whether any measures were required to be imposed on the project proponent to protect the environment from further damage. The report was sought to be submitted within four months from the date of the judgement.

The application was thereby disposed of.

Samiyappan

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application No. 114/2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Consent, Water Pollution
Decision: Dismissed
Date:3 February, 2016

JUDGMENT

This application was filed by a resident of Arachalur Village against the illegal operation of the coconut coir pith production unit run by the M/s Sowbarniga Industries ('4th respondent'). He contended that the said business was being carried out without consent from the State Pollution Control Board and that the operation of the said unit had highly polluted the drinking water in the area, caused hazard to cultivations in the nearby lands and had led to increase in the salinity and air pollution in the area.

When the 4th respondent approached the Madras High Court seeking restoration of electricity, the District Collector was directed to file a status report upon inspection of the disputed unit. The report stated that the unit was in operation without consent of the Board and had been discharging untreated trade effluents into the land, giving the Board enough reason to disconnect the unit's power supply and seal the premises, as well as take action under Section 133 of the Criminal Procedure Code. It was also revealed that the unit had violated the pollution control norms and had been functioning without proper extension of permission for their building, further causing nuisance and pollution.

The 4th respondent submitted that the unit had been closed in 2015, however the applicant contended that this submission was a mere camouflage and as and when the Board had visited the unit, it was shown to them as if the unit was closed while the activities were carried on at all other times. Based on these revelations, the Tribunal directed the Board to immediately seal the premises and ensure that no activities are carried out till consent was granted. The Board also imposed certain conditions to be followed by the 4th respondent which included compliance with orders of the Madras High Court, non-commissioning of the unit without consent to operate, covering of the drying of coir pith adequately and provision of a collection tank to store any water during the rains, compliance with the emission and ambient air quality standards, covering of all conveyors and provision of a closed collection system for the final coir pith reject to avoid dust emission, use of open concrete yard, concrete or bitumen laid approach road, no drying of coconut fiber on the roads and finally, obtaining of all statutory clearances from the authorities. With the above directions, the application was dismissed.

Dasegowda & Ors

v.

Karnataka State Environment Impact Assessment Authority & Ors

Application No. 220/2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: EC, EIA
Decision: Dismissed as infructuous
Date:3 February, 2016

JUDGMENT

In this application, the applicant had prayed for a direction against the project proponent of the disputed project, Nadaprabha Kempegowda Layout, to obtain Environmental Clearance ("EC") from SEIAA in accordance with the Environment Impact Assessment Notification, 2006 ("EIA, 2006"). The application was based on the prior interim stay order granted by the Hon'ble Tribunal on 4th January, 2016 on the construction of the project being undertaken in a lake area.

The respondent claimed that the EC had already been obtained in respect of the project on 29th October 2015, and this had been mentioned in the petition by way of reply as well as application for vacating the order of stay. It was also alleged that the applicants knew of the same as they had filed an application challenging the same the very next day. However, the applicant submitted that at the time of filing of the present application, he was unaware of the grant of EC.

Upon finding that an EC had already been obtained and the same has been challenged by some other person, the Hon'ble Tribunal rejected the plea of the applicant for amending the prayers but gave him liberty to take any other recourse known to law.

Accordingly, the Hon'ble Tribunal vacated the stay order and dismissed the application for being infructuous.

M/s/ Thangavel Water Washing Unit

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors

Appeal no. 57/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Dr. R. Nagendran
Keywords: Renewal of Consent
Decision: Allowed
Date: 3 February, 2016

JUDGMENT

This appeal challenged the order of closure of the appellant's unit, Thangavel water washing unit, issued by the State Pollution Control Board ('Board').

According to the appellant, the unit had commenced its operation after obtaining the requisite consents but had been issued with a show cause notice stating that the unit was carrying on dyeing process instead of water washing, which had been made without any evidence, due to personal vendetta against the appellant.

Upon inspection of the unit, none of the reports indicated that any dyeing process was being carried out, however, the Tribunal opined that it would be fit to issue a direction to the appellant to apply for renewal of consent within a period of one month from the date of the judgment and the Board was directed to consider the said application within a period of two months and pass suitable orders. It was also made clear that in case of any violation of the conditions of renewal, there would be no impediment for the Board to take action in accordance with the law.

Therefore, the impugned order was set aside and the appeal was allowed.

M/s. Venkatachalapathy Belt Calendering

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors

Appeal No. 53/2013 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Dr. R. Nagendran
Keywords: Consent
Decision: Allowed
Date: 3 February, 2016

JUDGMENT

This application challenged an order of closure issued by the Pollution Control Board ('Board'). It was alleged that the belt calendaring unit did not require any consent from the Board, however, the same had not been taken account, and the unit had been closed down.

However, a written submission filed by the Chairman of the Board revealed that so long as the unit was a belt calendaring unit, it did not require any consent and the same was recorded. It was also made clear that the appellant should only carry out the belt calendaring unit activities and nothing more. Hence, the impugned order passed by the Board was set aside and the appeal was allowed.

T. Sundaravelu Mudaliar& Sons

Sri Murugan Dyeing Factory

Sivasakthi Dyeing Factory

R. Kanniappan and Sons

Kumaran Dyeing Factory

Amaravathi Dyeing Factory

Sri Ramakrishna Dyeing Factory

S. Velayutham Dyeing Works

Arul Lakshmi Dyeing Works

R. Shanmugam and Sons

v.

Tamil Nadu Pollution Control Board

Application Nos. 465 & 466 of 2013 and Appeal Nos. 28 & 30 to 36 of 2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Effluent Treatment Plant, Consent
Decision: Disposed
Date:3 February, 2016

JUDGMENT

This application was filed by owners of business of manual dyeing of cotton yarn in their factories. They had obtained licenses for the same from the Municipality, however, were issued notices for allegedly effecting connections with their underground sewer without the Municipality's permission. The applicants submitted that despite discharging 10,000 liters of effluents per day into the Municipality sewer, they discharge did not pollute the Vegavathy river. Under these circumstances, the Tamil Nadu Pollution Control Board ('Board') issued a public notice to the units to obtain consent under the Air and Water Prevention and Control of Pollution Acts ('Air Act' and 'Water Act'). Dissatisfied by the reply from the units, the Board then issued impugned notices under Section 33 of the Water Act directing the units to close down with immediate effect.

The Tribunal directed the Board to conduct an inspection of the disputed area and file a status report, which when filed, confirmed that the appellants had complied with the requirements of the board. In a meeting arranged to arrive to an MoU, in which 56 out of the 67 units accepted the MoU, the 11 remaining units were directed to provide flow meter to assess the quantity of trade effluent and its sludge generation, to maintain

proper registers to assess the days of operation, quantity of production, quantity of trade effluent, chemical used for the treatment and sludge generation, to dispose chemical sludge generated in accordance with Hazardous Waste Management Rules, 2008 and to renew their agreement with proposed silk park immediately so as to apply and obtain the individual Consent to Establish.

It also imposed further conditions for the Handloom Silk Park and the Tribunal issued directions for continuation of compliance to such conditions even once the park was set up. It also directed the appellants to approach the Board for the purpose of consent under the Air and Water Act, apart from authorization under the Hazardous Waste Management Rules.

With the above direction, the application was disposed of.

Praveen Reddy

v.

A. Krishna Reddy & Ors.
Application No. 18/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Solid Waste
Decision: Dismissed
Date:4 February, 2016

JUDGMENT

This was a partition suit wherein the 1st respondent had caused hazard on the factual matrix. According to the applicant, the respondent had forcibly entered into a portion of the suit property and had attempted to put up a massive structure for the purpose of constructing a marriage hall. The applicant's apprehension was that the respondent would not take any steps for the disposal of the solid waste and sewage treatment.

Therefore, the Tribunal stated that if no such steps were taken, it would always be open to the applicant to approach the Tribunal and with the above liberty, the application was dismissed.

A.L. Annamalai & Ors
v.
M/s. Indus Towers Ltd. & Ors
Application No. 160/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Cell Phone Towers, Health Hazards
Decision: Dismissed
Date: 4 February, 2016

JUDGMENT

This application was filed seeking immediate stoppage of construction of a cell phone tower in a residential area without following the guidelines issued by the Department of Telecommunications. The applicant contended, on the basis of various research papers released by cancer institutes that the electromagnetic fields release calcium ions from cell membranes, which promote growth of tumors and hence cause DNA damage.

A similar issue had also been raised in the matter of *Dr. Arvind Gupta v. Union of India* where the Principal Bench had held that radiation, that is, emission of electromagnetic waves from the towers constructed by the respective respondents, did not fall within the scope of the jurisdiction vested in the Tribunal under the provisions of the National Green Tribunal Act, 2010. Following the same, the application was dismissed although it was left open to the parties to raise their contentions when the matter ends up at the Supreme Court.

Accordingly, the petition was disposed of.

Dr. G.D. Martin

v.

Union of India & Ors

Application No. 157/2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Metro Rail, Paddy Land, Reclamation, Wetland, Environmental Damage, Flooding
Decision: Dismissed
Date: 4 February, 2016

JUDGMENT

This application was filed challenging the alleged illegal action of the 10th respondent, the Kochi Metro Rail Ltd. in reclaiming hundreds of acres of paddy land and wet land causing severe environmental damage. The applicant stated that the 10th respondent had failed to obtain permission from the Kerala Government under the Kerala Conservation of Paddy Land and Wetland Act, 2008 for the conservation of paddy fields and neither had the Local or State Level Monitoring Committees (LLMC/SLMC) recommended any conversion of land in the favour of the respondent. It was also submitted that the LLMC had predicted destruction of streams and water bodies, resulting in flooding of the area and damage to the irrigation and drainage system if the project was allowed. Further, no permission was granted by the Land Revenue Committee. It was also alleged that the proposal by the 10th respondent to establish "Metro Village" within the geographical limits of the 4th respondent was not mooted as a part of any earlier proposal and was not mentioned in the Detailed Project Report (DPR) prepared. Absence of an EC and EIA study was also alleged by the applicant, and the same was put forth as a violation of *Karnataka Industrial Area Development Board* v. *K. C. Kenchappa & Ors.* It was also contended that the conversion of wetlands was a violation of the Wetland (Conservation and Management) Rules, 2010 (Wetland Rules, 2010).

The respondents had contended that government sanction for conversion of the land for construction of the Metro Village with the conditions to carry out Social Impact Study ('SIS') and Environment Impact Assessment ('EIA') study for which the 10th respondent had already engaged the requisite authority. Further, the action of filling the paddy fields was done as per norms, for which sanction had been accorded by the State Government and EIA was also carried out, through a private agency. It was further stated in the reply that no wetland was involved in the project as only allotted paddy lands were reclaimed which are not wetlands, which, according to the Local Agricultural Officer, had been lying vacant for the past 8 years and were being used as dumping grounds.

The Hon'ble Tribunal noted that the applicants had filed a writ petition in the High Court on the same grounds, which had been dismissed. The Tribunal was of the opinion that the averments made by the applicant were not sustainable as the paddy lands were not notified as 'Protected Wetlands' under the Wetland Rules, 2010. Moreover, Railway Projects did not come under Schedule I of the EIA Notification, 2006 and hence did not require an EIA. Further, the paddy lands acquired for the project were not located in any of the ecologically sensitive areas and nor were the endangered flora and fauna going to be affected by the same and the impact on the agricultural production would have to be examined on a case by case basis. In the case of the establishment of the Metro Village, directions were given to convert the land only after conduction EIA study and obtaining EC, with liberty to the applicants to challenge the said EC. The Tribunal directed the District Collector to conduct a joint inspection of the project to verify that no violation of the approved limit of land had been made within four weeks, and to take appropriate action of found to be so. The Tribunal also quoted cases such as *Council for Enviro-Legal Action v. Union of India*, emphasizing the importance of economic development while protecting the environment.

Accordingly, the application was dismissed.

Cruz Silveria & Ors.

Vs.

Goa Coastal Zone Management Authority & Ors.

Application No. 133/2015 (WZ)

Coram: Hon'ble Justice U.D Salvi and Hon'ble Dr. Ajay A. Deshpande
Keywords: Restoration, No Development Zone, Construction
Decision: Disposed
Date: 4th February 2016

JUDGMENT

This application was filed seeking restoration-rehabilitation of the area lying within the No Development Zone at village Calangute, Bardez Goa. Initially, the applicants had made a complaint to the Goa Coastal Zone Management Authority ("GCZMA") about the construction carried out by the respondent No. 4 (M/s. Nameh Hotels & Resorts Pvt. Ltd.) after which GCZMA issued show cause notice to the respondent No. 4.

The GCZMA submitted that it would consider the issues involved with reference to the show cause notice and pass an order within 3 months. Further, the applicants submitted that during the said period of three months, there should be no work at the site till the order that would be passed was communicated to the applicants. It was also the case of the applicants that to afford reasonable opportunity to question the outcome of the entire exercise, the ban imposed on the work be continued for the period of two more weeks.

In light of the given facts, the Tribunal directed that the GCZMA to hear the parties on the show cause notice and pass an order within three months and till the order is passed no work to be carried out at the site for two weeks thereafter and finally the contentions raised by the concerned parties was to remain open.

The Tribunal further referred the panchnama drawn by the Forest Department in May, 2015 to determine whether Respondent No. 4 was continuing with the Hotel business at the site in question and concluded that nothing could be gathered to show that the activity of the hotel business was carried out without proper consent of the authority at the site.

Accordingly, the application was disposed of with no order as to costs.

Dhayalam Charitable Society
v.
Union of India & Ors.
Application No. 46/2013
Malarvizhi
v.
Mr. I. Aswalt & Ors.
Application No. 235/2013

A.Chidambaram
v.
V. Rajendran & Ors.
Application No. 316/2013

N. Lakshmi Narasimhan
v.
Tamil Nadu State Pollution Control Board & Ors.
Application No. 05/2014

A.S. Ganapathy
v.
Union of India & Ors.
Application No. 139/2014
And
M.A. No.260/2015

Pugazhendhi
v.
Tamil Nadu State Pollution Control Board & Ors.
Application No. 174/2014

D. Bala Murali Krishna
v.
Tamil Nadu State Pollution Control Board & Ors.
Application No. 219/2014

D. Arumugam & Anr.
v.
Ayyamani @ Gunasekaran & Ors.
Application No. 19/2015

R. Devaraj
v.

Ministry of Environment, Forest and Climate Change & Ors.
Application No. 127/2015

And
Thiyagaraja Nagar Nalasangam
v.
The District Collector
Application No. 135/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Cell Phone Towers, Electromagnetic Radiation
Decision: Dismissed
Date: 5th February 2016

JUDGMENT

The applicants sought relief in connection with the construction activities of the cell phone towers and for an interim injunction to restrain the construction activities connected to in respect of the cell phone towers, particularly in residential areas, on the plea that the Electromagnetic Radiation emitted by the towers caused pollution and health hazards.

The Tribunal was informed that the same subject matter was pending before the Principal Bench in New Delhi and on that ground, the applications were adjourned. Further, in view of the decision holding that the construction activities of cell phone towers did not fall within the ambit, scope and jurisdiction vested in the Tribunal, the application had to be dismissed.

Southern Region Mines and Mineral

v.

MoEFCC & Ors

Application No. 137/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Environment Clearance, CRZ Notification
Decision: Disposed
Date:8 February, 2016

JUDGMENT

This application was filed seeking answers as to whether the 1st respondent, the Ministry of Environment, Forests and Climate Change ('MoEFCC') was correct in mandating manual mining of beach sand minerals, even when it was against the norms stipulated by the Atomic Energy Regulatory Board ('AERB'). The applicant had sought a declaration that the conditions of manual mining and zonal restrictions imposed in the Environment Clearance ('EC') issued by the MoEFCC to the 2nd and 3rd respondents prior to the 2011 Coastal Regulation Zone ('CRZ') Notifications were illegal and not enforceable.

The case of the applicant was that the beach sand minerals were rare and found only in the coastal areas and had a unique property and were easily replenishable. The applicant had contended that the 2nd and 3rd respondents had applied to MoEFCC for a permit to discontinue manual mining, however, they had not received any reply. It was contended by MoEFCC that machinery could not be employed for mining on the beaches, as it would cause ecological damage, because sand takes time to get replenished.

The Tribunal held that manual mining, being hazardous to health of the workers, and not being expressly required by the CRZ Notification, 2011, had to be discontinued. Directions were given to the 1st respondent to serve on the 2nd and 3rd respondents a communication containing the required particulars from them and on being served the said communication, the 2nd and 3rd respondent were directed to file such particulars, to be considered by the 1st respondent seeking for relaxation of the condition of manual mining and shifting to mechanized mining of beach sand minerals.

Accordingly, the application was disposed of.

V.V Minerals

v.

MoEFCC & Ors

Application No. 123/2015 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Consent, SEZ
Decision: Dismissed
Date:8 February, 2016

JUDGMENT

This application was filed challenging the insistence of obtaining a separate NOC from the Tamil Nadu Pollution Control Board, in respect of the Special Economic Zone ('SEZ'), which was approved by the 1st respondent. The applicant was engaged in the business of mining and separation of beach sand minerals and intended to operationalize the SEZ at Thiruvambalapuram Village in Tirunelveli District for carrying out manufacturing and exporting activities. The applicant was first granted approval by the Central Government and the same was issued only after obtaining formal inputs from all the Ministries, including the 1st respondent. One of the conditions was for the applicant to obtain various approvals from statutory authorities after which the SEZ was established. However, when the applicant wanted to operationalize the SEZ, it was informed that the NOC would have to be obtained from the Board and its attention was drawn to a letter issued by the MoEFCC whereby it was provided that the No Objection Certificate ('NOC') was a pre-requisite for grant of clearance. This was an internal communication.

The State Pollution Control Board contended that the State of Tamil Nadu had constituted a Single Window Clearance Mechanism for the purpose of issuing expeditious clearances, of which the 2nd respondent was also a member. It stated that the applicant had not filed an application for NOC and hence, the application had to be dismissed considering that the NOC was a pre-requisite. MoEFCC contended that the 3rd respondent had issued an EIA Notification 2006 with the amendments and in view of this notifications, the applicant was covered under Category A or B and would require Environment Clearance ('EC') by the Government or State Environment Impact Assessment Authority ('SEIAA').

The Tribunal was of the view that the provisions of the SEZ Act, 2005 superseded all the prior notifications, rules and orders pertaining to an SEZ and such rules and orders would not be valid. Further, the Board has not justification to offer as to how NOC could be insisted upon from the applicant and in view of the same, the applicant was entitled for a declaration that no separate demand for NOC could be made in respect of the SEZ, which was approved and notified by the Central Government. Accordingly, the application was disposed of with no order as to costs.

M/s. North East Effected Area Development Society

v.

Union of India

R.A. No. 12/2015 in Appeal No. 8/2011 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. N. Nagendran
Keywords: Review, Doctrine of merger, Principle of propriety
Decision: Dismissed
Date:10 February, 2016

JUDGMENT

Prior to this review application, the applicant had filed an appeal challenging the EC granted by the Ministry of Environment and Forests ('MoEF') to the Damwe Lower HEP Project in Arunachal Pradesh and on conclusion of the arguments, the Tribunal had dismissed the appeal, finding no merits on all grounds raised by the appellant.

On the day of the above judgment, an elaborate reasoned judgment was passed, against which the applicant filed a review application in which he took a preliminary objection that the judgment was not one on the eye of law and therefore, it was a nullity. Subsequently, the preliminary submission was rejected and the review application was directed to be posted for hearing on a later date. In the meantime, the applicant also filed a regular Civil Appeal before the Supreme Court with a prayer to allow the appeal and set aside the judgment ordered by the Tribunal as well as for condonation of delay of 108 days in filing the Civil Appeal against the NGT's order.

The Supreme Court ('SC') condoned the delay but dismissed the appeal, to which the review applicant contended that the dismissal of such appeal should be construed as a dismissal in respect of the preliminary issue alone and therefore, there should be no bar on the part of the Tribunal in taking the review application on merit.

Per contra, the State and the project proponent contended that the application cannot be reviewed again as it had been dismissed by the SC as once the Appellate or Revision Forum takes a decision, the decision of the Subordinate Forum merges with the same, and it cannot be said that the matter is still pending with the Subordinate Forum. In stating so, the respondents relied on several SC judgments to substantiate their contention that when once a Special Leave Petition is filed and rejected, the party cannot go back to the Tribunal. In light of the same, the point to be decided was whether the review application had to be proceeded with merit in spite of the dismissal of civil appeal by the Supreme Court against the judgment and order on maintainability of the order by the NGT.

The Tribunal held that the review application could not be pursued, as once the Supreme Court had passed the final order, any order of the Tribunal merged with the same and therefore, the review application could not be presumed to be pending. The Tribunal, on the basis of the doctrine of merger and principles of propriety, as enunciated by the Supreme Court in *Kunhayammed case,* dismissed the application. The Tribunal also quoted *Prabhakar Bhikaji Ingle*, wherein it was held that the Tribunal, under the Administrative Tribunal Act, 1985, cannot exercise its power of review after dismissal of the Special Leave Petition by the Supreme Court even if the dismissal was by a non-speaking order, holding that such exercise of review power by the Tribunal would be deleterious to the judicial discipline.

Therefore, considering the above judgments, the Tribunal stated that the application was not entitled for hearing of the review on merits. Accordingly, the review application was dismissed.

K. Senthilkumar
v.
Secretary, Tamil Nadu Pollution Control Board & Ors
Application No. 28/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Consent
Decision: Dismissed
Date:10 February, 2016

JUDGMENT

This application was filed seeking relief by way of granting permanent injunction against M/s. City Medi Tech Industries Pvt. Ltd. from beginning its construction activities and directions to the Pollution Control Board to not grant consent for running the industry.

However, the Officer present at the Hon'ble Tribunal submitted that the consent to establish had already been granted and conditions had been imposed, compliance of which would give way to the consideration of the application for consent to operate.

Therefore, the Tribunal held that the application could not be maintained before the Tribunal and the application was closed, granting liberty to the applicant to approach the appellate authority if in case he was to challenge the order or if any of the conditions imposed were violated in the future.

Accordingly, the application was dismissed.

Jeya Sabare Eswaran

v.

Managing Director, Tamil Nadu Co-operative Milk Producers' Federation Ltd. Ors
Application No. 172/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Solid Waste Dumping, Recycling
Decision: Dismissed
Date:10 February, 2016

JUDGMENT

This application had been filed seeking a permanent injunction against illegal dumping of plastic and solid waste at Korattur Dairy. The applicant had also sought a direction to remove the existing waste and use only the plastic as directed by the Indian Standard Guidelines for Recycling of Plastics.

According to the order of the Hon'ble Tribunal, as the respondent had addressed all the grievances of the applicant and a work order had already been issued to a successful bidder for clearing the waste, the application was closed with a direction to the respondent to adhere to the undertaking and orders of the Tribunal.

Accordingly, the application was disposed of.

M/s. V. Krishnamurthy
v.
The Tamil Nadu Pollution Control Board, Chennai & Ors
Application No. 222/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Professor Dr. R. Nagendran
Keywords: Quarrying, Ground water table, EC
Decision: Dismissed
Date: 11 February, 2016

JUDGMENT

The application was filed by the applicant aggrieved by the quarrying activities undertaken by the private respondents (Respondent No. 8 to 12) adjacent to his property in Mangalam village. The applicant alleged that the said activity was being carried out using explosives to blast stones along with the stone crushing activity which caused immense pollution, threat to life of the inhabitants and also resulted in the high reduction in yield of mangoes. The digging activity had also affected the water table in the applicant's property. It was also stated that the respondents were carrying out the said activity without obtaining the necessary approvals under Water, Air and Environment laws. The applicant also sought cancellation of the EC granted to the 8th respondent as the conditions of the EC were being violated. During the proceedings of the matter, the Tribunal passed an injunction order staying the quarrying operations of Respondent No. 8, 11 and 12.

The Tribunal took consideration of the said allegations and called for a status report from the Pollution Control Board which mentioned that the respondents had the necessary licenses from the District Collector, the Board and SEIAA. Further a Joint Inspection Report prepared by the officials of Ground Water Division of PWD, Department of Mining and Geology and the Department of Agriculture was also submitted to the Tribunal. The committee inspected the quarrying site of the Respondent No. 8 and recorded that the same was situated beyond 500 meters from the applicant's farm house, that there were indications of meagre seepage of ground water at a depth of 5 to 10m from the ground level which could be due to percolation of rain water, the ambient air quality level were found to be within the permissible levels, no damage to the mango and coconut plantation was observed, the quantum of quarrying in terms of the area mined and quantity of rough stone excavated was also found to be far below in terms of the lease.

The Tribunal considering the findings of the report rejected the allegations made by the applicant. The Tribunal observed that of the five project units, two namely, Srinivasa Blue Metals and Jayasakthi Blue metals (Respondent No. 9 and 10 respectively) were crushing units and they were out of the purview of the subject matter of the application since these units were not carrying out any quarrying operations. The 11th and 12th respondents quarry were also not in operation due to the fact that they had not obtained necessary

clearances. Further the lease period granted to them was also expired. The 8th respondent unit was carrying out its operations with all necessary consents and EC but the same was also not in operation temporarily due to the injunction order of the Tribunal.

Thus, the Tribunal dismissed the application observing that the issues raised by the applicant in respect of air pollution, depletion in ground water/water table, effects of quarrying on vegetation and plantation were not found to be true and correct by the scientific survey and inspections carried out by the authorities as per direction of this Tribunal. However, it directed the 8th Respondent to recommence its operations only after renewal of the Consent by the Board. It further directed the Board to undertake periodic inspection of the quarry unit and to the 11th and 12th respondent to carry its operations only after obtaining necessary clearances from the appropriate authorities.

Kayalpatnam Environmental Protection Association (KEPA)
v.
Union of India & Ors
Application No. 37 of 2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Environmental Clearance, Mercury contamination, EIA accreditation
Decision: Dismissed
Date: 15 February, 2016

JUDGMENT

The appeal was filed challenging the Environment Clearance dated 24.02.2014 granted by the MoEFCC to the 2nd Respondent, Dharangadhara Chemical Works Limited (DCW Ltd.) for construction of a new chlorinated PVC Plant of 14,400 million tonnes per annum and expansion of the production capacity of existing units in Kayalpatnam located in Tamil Nadu.

The appellant argued that the clearance granted was illegal and in complete violation of the substantive provisions and the procedural safeguards provided under the Environment (Protection) Act, 1986 and EIA Notification, 2006. The appellant pointed out several flaws in the EC process which included preparation of the EIA studies by non-accredited consultant whose provisional accreditation was also withdrawn by Nabet/QCI, deliberate suppression of crucial facts in the Form I including presence of two reserve forest (Kottamadaikkadu and Kudirimozhi Theri RF's), CRZ-I and ecologically sensitive areas etc, non-consideration of the existing mercury pollution and health issues faced by the local people, non-disclosure of Thamirabarani river estuary at the site. The appellant also alleged that the project proponent had history of repeated environmental violations which were simply ignored by the EAC/MoEFCC. It was also argued that due to the pollution caused by the respondent unit which manufactured carcinogenic chemicals, the area was also observing high rate of cancer among its residents.

MoEFCC in response submitted that the respondent proponent was granted EC after following due procedures of law. While denying all allegations made by the appellant, the project proponent submitted that the project was a combination of co-generation plant and synthetic organic facility. Further minor expansion was proposed for improvement in environmental performance. Thus, it denied any increase in pollution load after proposed expansion. The Board replied that the unit had obtained consents under the Air and Water Act after considering that the same had complied with all the earlier directions of the Board.

The points for consideration for the Tribunal were as to whether the EC was liable to set aside for preparation of the EIA studies by an unqualified agency, whether there was non-

application of mind by the EAC and whether there was concealment of material information in Form I.

The Tribunal noted that the project of the Respondent No. 2 was a Category A project listed under item 5 (f) of the Schedule to the EIA Notification, 2006 which dealt with synthetic organic chemicals, thus, vide OM dated 18.03.2010 of the MoEFCC, the EIA studies for the said category were required to be done by an agency accredited by Nabet/QCI. The appellant had contended that the consultant/expert who prepared the EIA report for the project were not duly accredited. However, the said allegation was found to be incorrect as by virtue of the OM dated 31.12.2010, the respondent consultant (Respondent No. 5) was permitted to deal with the Category A projects in Sector 21. It further observed that just on account of the fact that the Respondent No. 5 was involved in the maintenance of ETP of the project proponent, it could not be said that there was conflict of interest or the Respondent No. 5 was barred to carry out the EIA study for the project proponent. Further, the said respondent was also approved by the Director Nabet/QCI to conduct the analysis in its internal laboratory. The Respondent No. 6 was also found to be competent to undertake EIA preparation, thus, the Tribunal rejected the contention of the appellant to set aside the EC for non-accreditation of the consultants. On the issue of non-application of mind by the EAC, the Tribunal observed that the project was duly appraised by the EAC followed with a site visit of the existing plant which ensured that the pollution control measures were effectively maintained by the project proponent. The Tribunal after going through the documents noted that right from the commencement of the project, the process was strictly adopted by the respondent proponent and the project was cleared after much deliberation by the EAC hence rejecting the contention of the appellant in this regard.

The Tribunal then dealt with the contentions of the appellant with respect to the inadequacy/concealment in Form I. The appellant had pleaded that there was discrepancy in the location given in the Form I and EIA report and stated that there was deliberate concealment of the correct location as the same was a populous municipality where the project could not have been set up. However, the Tribunal rejected the said contention as the respondent clarified that the project involved both the locations and hence there was no concealment by the respondent proponent. The appellant had also pointed out that there was violation of the OM dated 24.12.2010 which stipulated for separate TOR's/public hearing from each sectoral EAC for interlinked projects. The appellant argued that the since the project involved two sectors 4 and 21, industries and thermal power, it only obtained the ToR and recommendations of industries sector alone and not thermal power sector. However, the Tribunal rejected the said contention on the ground that the OM was only to be applied prospectively and not to applications made prior to it (as the Form I was submitted on 27.10.2010). On the issue of pollution due to the presence of mercury in the environment because of the respondent's industry, the Tribunal stated that the studies relied upon by the appellant to prove health hazards due to mercury contamination were of the past and did not represent the present factual position. The Tribunal further relied upon the inspection report dated 30.06.2013 of the

Regional office MoEFCC, Bangalore which showed effective implementation of pollution control measures by the respondent unit. Thus, it rejected the contention of the appellant that the industry was a polluting one. While dealing with the issue of suppression of CRZ areas in the proposed expansion, the Tribunal noted that the construction was proposed on a vacant land which was outside the CRZ-III, however taking note of the fact that the industry was a red category, the Tribunal emphasized on the requirement of stringent pollution control measures and regular monitoring of the EC conditions. The Tribunal found that there were no reserve forest and ecologically sensitive areas in the proximity of the industry, and further the GO's relied upon by the appellant prohibiting setting up of new projects within a distance of 5 kms of the notified rivers were not applicable to the present industry as the same was not new but an existing/expansion project.

The Tribunal observed that the appeal was filed with combined causes of action which sought cancellation of the EC of the expansion project alongwith the closure of the Ilmenite plant of caustic soda division which were two separate reliefs with separate cause of action non consequential to each other and thus not in conformity with the Rule 14 of the NGT Rules, 2011. The Tribunal finding no infirmity in the Environment Clearance, upheld the same and dismissed the appeal with a liberty to the appellant to initiate necessary proceedings whenever violation of EC conditions by the respondent industry was observed.

Moosakutty
v.
District Collector & Ors
Application No. 367/2013 (SZ)

Coram: Hon'ble Justice Swatanter Kumar, Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Clay Extraction, River Bed
Decision: Dismissed
Date:16 February, 2016

JUDGMENT

This application was filed to direct the respondents to take follow-up action as per the order passed by the High Court of Kerala ('HC') regarding the unlawful extraction of clay on the banks of the Gayathri river, which was still ongoing, thereby violating the HC's order.

The respondents submitted that they were keeping vigil on such activities and were taking all possible steps to prevent illegal extraction of clay from the river bed. Considering that the allegations made in the application were vague and the respondents were taking necessary action, the Hon'ble Tribunal dismissed the application, however, with a direction to the respondent that they would continue to prevent unlawful extraction of clay in terms of the order of the High Court.

Qamaruddin Gazi
Vs.
Chief Secretary, Govt. of West Bengal & Ors
Original Application No. 52/2015 (EZ)

Coram: Hon'ble Justice Mr. Pratap Kumar Ray, Prof. (Dr.) P.C. Mishra
Keywords: Poultry Farm, Respiratory Diseases
Decision: Disposed
Date: 16 February 2016

JUDGMENT

This application raised a vital issue of environmental pollution and injury to human health caused by a poultry farm established in a residential area based in District 24 Parganas, (North), West Bengal. The complaint arose due to the issue of health hazard arising out of emissions of ammonia gas and other gases generated from waste materials of the poultry farm, causing discomfort to the neighborhood people. The applicant contended that the poultry farm was illegally and unlawfully established without complying to the guidelines as fixed by the Dept. of Animal Husbandry and Veterinary services of Government of West Bengal and in spite of several appeal to the private respondents to shift the poultry farm and applications to local authorities, no step had been taken to relocate the farm.

The Tribunal heavily stressed on the research papers which highlighted the adverse impacts and pollution generated in the poultry farm which results into respiratory diseases and water pollution due to discharge of animal waste in the environment. The Tribunal further relied upon various judgments passed by the Hon'ble Supreme Court declaring right to healthy and pollution free environment as part of Article 21. The Tribunal also threw light on the directions passed by the Haryana Government laying down the siting criteria for the establishment of poultry farm in view of the judgement passed by the Apex Court in the matter of Vijay Bansal Advocate vs State of Haryana.

The pleadings in the instant case revealed that the respondent owners of the poultry farm had not obtained any permission/consents from the State Pollution Control Board for which due notice was also served upon the respondents not to run the farm without prior permission. However, despite the said notice, the private respondents continued to operate the poultry farm illegally. Admittedly, the farm had only obtained license from the Local Panchayat.

Relying upon the directions passed by this Tribunal in the matter of Dipak Mondal vs Pollution Control Appellate Authority West Bengal & Ors, the Bench restrained the respondents from operating their poultry farm till valid consents were obtained from the Board. It further directed the Board to frame appropriate siting guidelines within a period

of six months and issue closure notice to the poultry farms if the same are found to be non-compliant or operating in breach of the directions passed.

Thus, the OA was allowed and disposed of with costs of 10,000 to be paid by the poultry farm owners towards litigation expenses to the applicant.

News Item published in "The Hindu" dated 05.03.2013 in "Packaged Drinking Water units in Chennai City" -Suo Motu
Vs.
The Commissioner, Corporation of Chennai & Ors.
Application No. 40A of 2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Flavored Water, Proprietary Food
Decision: Disposed
Date: 17th February 2016

JUDGMENT

This application was taken up by the Tribunal Suo Motu and involved a case related to the flavored water, which was classified as "proprietary food". When the counsel appearing for FSSAI contended that the Product Approval Advisory had been statutorily prepared and steps were being taken for the purpose of placing it on the floor of parliament for its approval, the Tribunal directed the matter to be posted on the date of the judgment for the production of Notification issued by the Central Government in furtherance of the Advisory.

Before this proposal was sent, there was no standard fixed for proprietary food, which included flavored water, which was the subject matter of the issue. In an amendment made to the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, the Parliament defined proprietary food and the ingredients, which it should contain. In view of this amendment, the tribunal directed that the amendment should be given effect to and the product should be guided in accordance with the statutory amendment issued by the Government of India.

With the above direction, the application was disposed of with no order as to costs and the pending MA's were closed.

Kumbeswaran
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 10/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Hot Mix Plant, Pollution, Consent
Decision: Allowed
Date: 17 February, 2016

JUDGMENT

This application was filed seeking a permanent injunction against N. Narayana Rao and N. Punna Rao, Respondents 3 and 4, from operating hot mix plants in Kancheepuram District as it directly affected the students undergoing yoga and studying Sanskrit at Swami Dayananda Vedanta Vidya Nilayam which was situated adjacent to the said respondents' unit. The applicant also complained of environmental pollution caused to the activities of the hot mix, which was running without approval from the competent authorities and consent from the Pollution Control Board.

It was discovered that out of the eleven units in the disputed survey, only two units had renewal of consent from the board and the remaining units had been called by the Board for a personal hearing and that the Board had been taking steps to regulate the activities of those units by issuing consent.

The Tribunal observed that although the renewal application were pending, the units should not be permitted to operate unless and until the consent to operate was extended. In view of the same, the Tribunal directed seven units working without consent to immediately be closed and to only start functioning after the Board granted renewal. It also directed the Corporation of Chennai and the Highways Department to ensure, before issuing work orders, that the units had got valid and subsisting consent to operate from the Board. The Board was directed to take up the issue and frame necessary guidelines for the hot mix units within a period of 8 weeks from the date of the receipt of the current order.

Accordingly, the application was allowed with the above directions.

M/S Ganganagar Textiles
v.
Rajasthan Pollution Control Board

Miscellaneous Application No. 1227 of 2015
In
Review Application No. 30 of 2015
In
Original Application No. 358/2013 (THC) (PB)

Coram: Hon'ble Justice Mr. Swatanter Kumar, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Justice M.S. Nambiar
Keywords: Polluter pays principle, Res Judicata
Decision: Dismissed
Date: 18 February 2016

JUDGMENT

The applicant in the present MA sought modification of the judgement dated 1st May, 2014 passed by the Tribunal wherein a sum of Rs 5 lakhs was imposed upon the textile industries in the State of Rajasthan for causing serious pollution of the ground water and not discharging their effluents in the CETP. The applicant alleged that their unit was not polluting and all their discharged effluents were treated and therefore they should not be made liable to pay the said amount.

The Tribunal noted that there had been multiple litigations in the given case. The statutory appeal and review application preferred by the Rajasthan Industrial Development and Investment Corporation Ltd (RIICO) against the said judgment was dismissed by the Hon'ble Supreme Court. The applicant then approached the Tribunal in MA No. 818 of 2014 and subsequently in Review Application No. 30 of 2015 wherein the Tribunal maintained its stand for not modifying its order in respect of the amount imposed upon the industries in view of 'polluter pays'. The Tribunal noted that since none of the said orders were appealed before the Supreme Court, the same had gained finality. The Tribunal noted that the application was thus barred by the principle of Res judicata. It also rejected the plea of the applicant that his case is an exception to the generalised case of industries covered under the judgement of the Tribunal in M/s Laxmi Suitings vs. State of Rajasthan.

While the Tribunal declined to modify its earlier orders, it however directed the Rajasthan Pollution Control Board to deal with the consent application of the industry in accordance with law. The Board was further directed to inspect the unit with respect to the effluent discharge and washing plants constructed by the applicant and file its report before the Tribunal.

Accordingly, the application was disposed of.

Gurpreet Singh Bagga

v.

Ministry of Environment and Forests & Ors

Original Application No. 184 of 2013

AND

Jai Singh & Anr

v.

Union of India & Ors

Original Application No. 304 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Illegal Mining, Minor Minerals, Principle of Limited Guesswork, Compensation, Restoration, Principle of polluter pays'
Decision: Allowed
Date: 18 February 2016

JUDGMENT

Both applications were dealt together as similar issues arose for determination. In O.A. No. 184 of 2013, a social worker living in Saharanpur, U.P filed the application praying closure of the illegal mining of minor minerals like sand, boulders etc in the district, specifically on the banks of river Yamuna which was carried out in violation of the Environment (Protection) Act, 1986 and Environment Impact Assessment Notification 2006 ["Notification 2006"]. It was the case of the applicant that certain mining permit holders were treating the entire district as mining area, instead of just working on the area specified in the Environment Clearance ["EC"], and in some cases even without obtaining prior EC, mining activity was taking place. In the case of *Deepak Kumar v. State of Haryana & Ors*, the Central Powered Committee ["CEC'] had been directed to carry out inspections of illegal mining in UP, Haryana, and Rajasthan, and on the basis of the report, orders were passed by the Supreme Court to the District authorities of concerned states to specifically ensure that no illegal mining was carried out on both sides of river Yamuna. Similarly, in O.A. No 304 of 2011, it was averred that large scale illegal mining activity was ongoing in Yamunanagar, and representations were made to concerned state authorities regarding the same, however, no concrete steps were taken by the authorities to control/regulate illegal mining of minor minerals. Infact, it was noticed that the mining activities were taking place by the mining mafias in connivance with the State authorities.

In similar petitions filed before the High Court of Allahabad, directions were given to stop mining of minor minerals including silica/sand without any EC. Similar directions were issued by the Tribunal restraining mining particularly in river bed in the matter of *National Green Tribunal Bar Association v Ministry of Environment, Forest & Climate Change in OA No. 171 of 2013.* The applicants further submitted that illegal mining has serious impacts on the ecology and biodiversity of the river since it causes immense destruction to the flora, fauna including aquatic life further damaging the flood plain of the river. Further, the stone crushers and screening plants operating alongside were causing erosion to the river banks and spreading massive air pollution and health hazards to public at large. Alongwith the other prayers, the applicant also prayed for direction to identify persons involved in the illegal mining activities and take appropriate action including criminal proceedings under section 15 of the Environment (Protection) Act, 1986.

The State of UP in response to the applications stated that it has permitted only those mining activities for which prior EC had been obtained. It was further averred by the State that no mined material was allowed to be removed from the lease hold area in violation of the conditions stipulated in the EC. It was further brought to notice that the MoEF vide its letter dated 25.10.2012 had imposed a condition restraining mining within three metre radius or ten percent of the width of the river whichever is more on both sides of the river to prevent erosion of river bank. Further, the State had stopped functioning of illegal stone crushers within 500 metres from the river bed of river Yamuna. It was also brought to notice that the State had issued a notification restricting mining activities beyond the depth of three metres or water level, whichever is less and no violation to the same had been noticed. The State of Haryana filed its affidavit stating that no illegal mining was noticed on the river bed of Yamuna falling on Haryana side and shifted the burden on the State of UP claiming that despite repeated communications, no action had been taken by the said State which had also resulted in damage caused to Hathnikund Barrage.

The MoEF in response submitted that with respect to minor minerals, the power to frame regulations is with the State Government under section 15 of the Mines and Minerals (Development and Regulation), Act 1957 and in terms of the orders passed in Deepak Kumar case, even the mining leases of less than 5 hectares have been issued EC, the conditions of which have been monitored regularly. However, due to large number of sand mining operations throughout the country, the State Government had to be vigilant to ensure compliance of the statutory clearances.

Based on the pleadings, the Tribunal framed the following issues:

Whether the application was not maintainable:

It was contended by the private Respondents that the applications were bereft of scientific data/supporting material, and beyond the scope of Section 14 of the NGT Act. It was also argued that the applications were barred by time since the report of the CEC

was filed way back in 2012 while the application was filed in 2013. The Tribunal held that the illegal and unauthorised mining causing grave environmental damage is a substantial question relating to environment and that every act of illegal mining and each subsequent violation of the EC conditions would give rise to a complete and recurring cause of action, thus, giving rise to a fresh period of limitation. The application was thus held to be maintainable under the said section.

Whether illegal mining of minor minerals (sand/boulders etc..) was being carried out in Haryana and Uttar Pradesh:

Illegal mining was defined by the tribunal as rampant and indiscriminate mining, mining without lease or EC, or undertaken beyond the area specified in the license/lease, and extraction of minerals beyond the specified depth of the river itself. The applicants had submitted that the project proponent was treating the entire district as the mining area, in ignorance of the specifications of the permits, and that anyone was allowed to undertake mining operations using the same form, causing serious pollution. The tribunal referred to the report of the CEC, as per which large scale illegal mining was found in the River Bed of the Yamuna River and adjoining areas of Hathnikund Barrage where mining to the extent of 2.1 km from the barrage was prohibited, and also in the other areas outside those sanctioned, in all three states of UP, Haryana and Rajasthan. Further, even after the order of the Supreme Court in 2012, *Deepak kumar (supra)*, illegal mining was found to be going on in the disputed states. The Tribunal also noticed that the transit permits/Form MM-11 for transportation of sand/bajri issued to the private respondents were fraudulently used to transport illegally mined boulders to the stone crushers and screening plants which were operating without NOC from the respective Pollution Control Boards.

Whether the States were responsible to prevent such illegal mining as per law:

Sections 5 to 13 of the 1957 Act provides different restrictions and regulations subject to which mining lease/transit permits can be granted by the Central Government. These sections however do not apply to mining leases in respect of minor minerals, dealt with by Section 14 of the Act. Under Section 15 of the 1957 Act, the State Governments are empowered to formulate rules in respect of minor minerals by issuing a notification in the Official Gazette. Under Section 13, the Central Government is also empowered to frame rules regarding mining of minor minerals, and the Mineral Concession Rules, 1960 were so framed. Rule 22(4) mandates that State Governments decide the precise area for mining lease and communicate the same to the applicant, who in turn has to submit a mining plan for approval to the Central Government, which is then sent to the State Government. The States of U.P. and Haryana had also framed their own rules, and the area in question was also covered by the Air Act of 1981. The tribunal concluded that an obligation exists on the State Pollution Control Boards not to let industrial plants that cause such air pollution to operate, under Sections 17 and 18 of the Air Act. Further, the project proponents were found in violation of the EC Notification of 2006, as none of them

had obtained EC prior to the year 2012. Additionally, State Governments have been vested with powers under the Environment (Protection) Act, 1986, to take appropriate measures and/issue directions to protect and improve the quality of the environment. Relying on these statutory provisions and previous decisions of the court, the tribunal concluded that an 'unequivocal statutory obligation' existed upon the State and its authorities to check the illegal mining, particularly in light of Articles 48A and 51(A)(G) of the Indian Constitution.

Whether the lease holders/ noticees were liable to pay compensation for environmental damage caused to the river and its restoration:

To decide this question, the tribunal primarily examined the report of the CEC, which concluded that massive illegal mining was undertaken in district Saharanpur. The Tribunal found that large scale illegal mining of minor minerals was going on and the mined mineral was being transported in a manner prejudicial to the environment and the economy, transit permits were being misused to extract/transport in excess of the permissible quantity, and the lease holders were operating without EC initially. Subsequently, when they applied for EC, the mining activity was allowed to continue on the ground that minor mineral leases do not require prior EC. The CEC recommended for prohibition on mining on both sides of the Yamuna river and dismantling of stone crushers/screening plants operating within 500 metres from the flood plain. It further recommended for fixing of the responsibility on the States and imposition of exemplary penalty on persons responsible for illegal mining. The tribunal found that the activity was being carried on in an illegal and unauthorized manner and in violation of the EC conditions which caused massive air and water pollution in the area and disturbed the geo-hydrological regime of the river bed. It was noted that the private respondents did not obtain any permission from the Central Ground Water Authority for extraction of the ground water. Apart from other non-compliances, the respondents also failed to maintain data and provide regular compliance reports to the MoEF. The Tribunal noted that the illegal extraction of minor minerals and their transportation was undertaken in excess to the limits of permissible mining. Considering the negative impact of excessive sand mining on river bed and the damage caused to the ground water, the ecology and biodiversity of the river, the tribunal found the project proponents liable for payment of environmental compensation for degrading and damaging the environment. In deciding the quantum of compensation, the tribunal applied the principle of 'limited guesswork' since it was not possible to determine the liability with exactitude. The Tribunal invoked the principle of polluter pays' and imposed compensation of Rs 50 crores each on the private respondents/noticees for extraction of minor mineral and Rs 2.5 crores each on the stone crushers/screening plants for operating illegally.

Whether the tribunal should issue interim guidelines and directions:

The tribunal noted that large scale illegal mining had already been taking place, and minerals were already available in the market, and therefore a temporary deferment would not cause irreparable loss. Further, the fact that the government had lost huge

revenue to illegal mining was also taken into consideration, and the principle of sustainable development was applied to defer the activity temporarily in the interest of the environment, until a regulatory regime/mechanism was brought in place. The tribunal acknowledged that interim directions were required to be taken to protect the environment in consonance with the Preamble of the NGT Act and Section 20 (which enshrines the precautionary principle) considering that it is better to take precautions than restore the environment after degradation.

Therefore, the tribunal imposed a complete prohibition on mining of minor minerals (bajri, sand and boulders) in the flood plain of River Yamuna in the districts of Haryana and U.P, as well as all other villages situated on the banks for a period of 45 days and closure of the stone crushers/screening plants for the said period. Further, the states of U.P. and Haryana were directed to submit a comprehensive mining plan stating the extent of illegal extraction of minor minerals and impact on the environment and constituted a high powered committee to examine the same and submit a report before the tribunal. The regulatory authorities were directed to ensure that there was no illegal and unauthorised mining and directed to impose a fine of Rs 5 lakhs on persons found responsible for violating the said directions. Additionally, the authorities were restricted from extending or renewing mining leases, consents/EC till final orders of the Tribunal after due consideration of the report.

The application was accordingly disposed of.

M/S SSM Builders & Promoters

v.

Union of India & Ors.

O.A. No. 464 of 2015

AND

S.P Muthuraman

v.

Union of India & Ors

M.A. No. 1064 of 2015

IN

Original Application No. 37 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. M.S. Nambiar, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Post Facto EC, Environment compensation
Decision: Allowed
Date: 18 February 2016

JUDGMENT

By the judgement dated 7th July, 2015 passed in OA No. 37 of 2015, the Tribunal had quashed the office memorandums issued by the MOEFCC dated 12th December, 2012 and 27th June, 2013 holding it ultra vires the provisions of Act of 1986 and Notification of 2006 and had directed the MOEFCC and SEIAA of all states not to give effect to the said memorandums. The Tribunal had further directed for constitution of an Expert Committee to look into the illegal and unauthorized activities carried out by the project proponents and environmental damage caused by such projects. This application was filed by the project proponent (applicant) seeking directions to the committee to complete the inspection and submit the report to the Tribunal in respect of the project of the applicant. Later, it filed another application (OA No. 464 of 2015) praying that it should be granted EC. The applicant had also deposited 36 crores as environment compensation for carrying out construction without EC.

The tribunal found that the applicant had started and continued construction without obtaining Environmental Clearance/consent of the Tamil Nadu Pollution Control Board, and also violated the conditions of the building permit and panchayat permission. The Tribunal noted that as per the Expert Committee Report, the applicant was required to take certain measures with respect to the project to which the applicant undertook to comply. Thereby the tribunal directed the SEIAA, Chennai to deal with the application

filed by the applicant for EC within 3 months from the date of the order, and impose such conditions as required for the restoration of the ecology damaged by the ongoing project. The SEIAA was also directed to direct the applicant to restore natural drains, make provisions for conduit drainage system, to substitute the open natural storm water channels (when unavoidable), and to examine any other damage/recommend remedial steps for its correction in light of the Expert Committee report.

Accordingly, the application was disposed.

T.N. Godavarman Thirumalpad
v.
Union of India
AND
State of Bihar
v.
Union of India & Ors.

M.A No. 1153,1154 & 1155 of 2015
In
W.P (C) No. 202 of 1995 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Wildlife Sanctuary/National Park, Mining, safety zones
Decision: MA 1154/2015 Allowed, MA 1155/2015 Dismissed
Date: 18th February, 2016

JUDGMENT

These applications were related to the mining/construction activity in the Valmiki National Park and Wildlife Sanctuary in Bihar. The dispute was with respect to the order of the MoEF dated 20 August, 2002 whereby mining activities in the said Sanctuary/National Park were allowed subject to certain conditions. The said order was against the decision of the State of Bihar which had cancelled the leases for mining/collection of pebbles from the Pandai river within the park, on the grounds that such activity violated the order of the Supreme Court in W.P No. 202 of 1995. Thus, the State of Bihar approached the Supreme Court in IA No. 836/2002 (MA No. 1154/2015) for quashing of the said order alleging that mining activity cannot be permitted in view of the fact that the same would be detrimental to the forest and biodiversity of the Sanctuary which is the lone Tiger project of the State and the 18th Tiger project of the country. Upon consideration of the said facts, the Supreme Court stayed the operation of the order of MoEF restoring mining within the Sanctuary and applied this order to the entire areas falling within the National Park. Against the said order, the private parties (mining lessees) moved the Supreme Court in I.A No. 895/2003 (MA No. 1155/2015) for vacation of stay.

The said applications were sent to the CEC which recommended to set aside the order of the MoEF and immediate closure of all mining activities within the Sanctuary/National parks as well as in the safety zones. It further stated that no mining lease must be granted by the MoEF under section 2 of the Forest (Conservation) Act, 1980 without prior approval of the Supreme Court in view of the order dated 14.02.2000 in IA No. 548.

When the said applications came before the Tribunal upon transfer, the Tribunal noted that neither any permission from the Supreme Court nor FC has been sought by the private parties. Moreover, it observed that the Central Government does not have powers to suo motu permit non forestry activity in forest area under section 2 of the Forest (Conservation) Act, 1980 unless it is recommended by the State. The Tribunal also considered Section 29 of the 1972 Act, wherein no removal of forest produce and wildlife from the Sanctuary and no change in flow of water into and outside the Sanctuary could be permitted till the same is for the betterment of the wildlife.

Concluding that the mining activity cannot be permitted in the Wildlife Sanctuary/National Park, the Tribunal quashed the order of the MoEF and directed the State of Bihar not to permit any mining or non -forest activity in the entire area of Valmiki National Park and Wildlife Sanctuary. It further noted that the State Govt. and MoEF have failed to perform their statutory obligation to identify, delineate and notify the 'safety zone' beyond the actual limits of the National Park/Sanctuary and prohibit activities destructive of wildlife and therefore directed the State to submit its proposal for notification of the "safety zone" which should be notified not later than three months from date of judgement. However, as an interim measure, the tribunal also directed that one km beyond the boundary of the Park/Sanctuary would be treated as safety zone, where neither mining nor any activity having adverse effect to environment and ecology is permitted.

T.N. Godavarman Thirumulpad

v.

Union of India & Ors

Miscellaneous Application No. 1170 of 2015 and Miscellaneous Application No. 1160 of 2015

In the matter of

The Farmers Association

v.

Union of India & Ors (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Bikram Singh Sajwan, Hon'ble Mr. Justice Ranjan Chatterjee
Keywords: Forest, Section 4 of the Punjab Land Preservation Act, 1900
Decision: Allowed
Date: 18 February, 2016

JUDGMENT

The applicant had filed the abovestated applications before the Hon'ble Supreme Court objecting to the inclusion of their cultivated and inhabited lands in the classification of 'forest area' vide Notification issued under Section 4 of the Punjab Land Preservation Act, 1900 [the "Act"]. The submission of the applicant was that these lands were agricultural areas inhabited even prior to the coming into force of the Forest (Conservation) Act, 1980 and were therefore required to be excluded and delisted from the said Notification.

The Tribunal noted that in the year 2000 a request was made to the Inspector General of Forests and Special Secretary of Environment and Forest to approve the exclusion of the aforesaid areas from the category of forest. In response to the same, the Central Government vide its communication dated 10th November, 2000 informed the State that it has no objection to deletion of the said lands subject to permission of the court. On the directions of the Supreme Court, recommendations were filed by the Central Empowered Committee in which it clarified that the State of Punjab is at liberty to take approval from the Central Government under section 2 of the Forest (Conservation) Act, 1980 for deletion of these lands from the list of the forest areas.

The Tribunal noted that despite the said position was clear, the matter had been kept pending due to the inaction of the State of Punjab and MoEF. In view of the same, it directed the State to submit a complete proposal to the MoEF and issue a final notification deleting the said lands from the exisiting record after the proposal is being dealt and

considered as per the provisions of section 2 of the Forest (Conservation) Act, 1980. In addition to the same, it directed the Secretary, Financial Commissioner of Forest and Secretary, State of Punjab to be personally liable for compliance of the said directions.

Social Action for Forest & Environment

v.

Union of India & Ors

Miscellaneous Application No. 339 & 924 of 2015 in Original Application No. 117 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Illegal Mining, River Bed, Polluter Pays Principle
Decision: Allowed
Date: 18 February 2016

JUDGMENT

The application was filed by SAFE, an organization working in the field of environment protection, seeking a direction to the State of Uttarakhand and MoEFCC not to allow any mining on the bed of River Ganga and to recover cost of damage done to the ecology on the basis of Polluter pays Principle. The applicant argued that there were several representations made in this respect to the MoEF, in pursuance of which a team was constituted which inspected the areas which recorded that illegal mining was being carried out in Haridwar and recommended stopping of all illegal mining on river bank to avoid further adverse effect on the surrounding areas. Though the recommendation was forwarded to MoEF, however, no action was initiated. It was the case of the applicant that no EC is to be granted for extraction of minerals from any river bed, where the area is less than 5 hectares, and that the mining in question is damaging the ecology, environment, and is being carried out in violation of orders. As per the respondents, the mining was sanctioned and EC was obtained for the same.

The tribunal held that illegal, unregulated and unscientific mining was taking place on the river bed and in the River Ganga and despite being aware of the same the state authorities failed to take remedial measures. Referring to its judgements passed in Original Application no. 10/2015 (Indian Council for Enviro-Legal Action Vs. National Ganga River Basin Authority, NBRA & Ors.) and Original Application No. 171 OF 2013 National Green Tribunal Bar Association the Tribunal vs. Ministry of Environment and Forest where directions were given to regulate mining, the same were made applicable to the present case. To determine the extent of illegal mining/damage to the environment and assess the loss, the Tribunal constituted a committee which was also directed to suggest remedial measures including realization of the loss from the persons responsible for illegal mining. The Committee was directed to submit a report within three months from the date of the order.

Accordingly, the application was disposed.

S. Ali Hussain

v.

Union of India

Appeal No. 48/2013 & Appeal No. 71 of 2014

&

M/s. K. Ananthi

v.

Union of India

Appeal No. 72/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Environment Clearance, Coastal Zone Management
Decision: Partly allowed
Date:19 February, 2016

JUDGMENT

This application pertained to the challenge to an Environment Clearance ('EC') granted to M/s. Sindhya Power Generating Company Pvt. Ltd. for setting up of a Thermal Power Plant in the Nagapattinam District of Tamil Nadu. Herein, the Tribunal directed the Ministry of Environment, Forests and Climate Change ('MoEFCC') to produce entire documents of EAC, CRZ and all the minutes of the committees along with a list of members of EAC and Coastal Zone Management Authority. Thereafter, 5 volumes of copies of documents were filed and the originals were filed on the next date of hearing. Perusal of the originals and photocopies revealed that certain pages were missing in the file.

It was contended by MoEFCC that the submitted documents contained sensitive information which should not be read by the appellant and the respondents, and should only be read by the Hon'ble Tribunal. It was argued by the counsel for the appellant that the documents did not fall under any of the categories under Section 8 of the Right to Information Act, 2005 ('RTI Act, 2005') and hence had to be disclosed.

The Hon'ble Tribunal observed that the RTI Act, 2005 had come into existence with an object of securing access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority., and according to Section 2(j) of the Act, MoEFCC was a public authority. However, Section 8 of the Act grants an exemption from disclosure of information falling under it. The Tribunal, quoting the Supreme Court ('SC') decision in the *Institute of Chartered Accountants of India v. Shaunakh H. Satya,* stated that public interest and accountability must be balanced with each other. The Tribunal therefore rejected the contention that

the information in question was covered by Section 8(1)(a) of the RTI Act, 2005, as the project was merely a commercial venture to produce power and was not a government proposed scheme. It was also held that where a project like the one in question was being processed in which public interest was involved, fairness required transparency at each level so that the attainment of sustainable development would have some purposeful meaning.

Accordingly, the memo filed by MoEFCC was rejected.

Om Dutt Singh
v.
State of Uttar Pradesh & Ors

Miscellaneous Application No. 1050 of 2015
Review Application No. 14 of 2015
In
Original Application No. 521 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. Devendra Kumar Agrawal
Keywords: Execution
Decision: Dismissed
Date: 19 February, 2016

JUDGMENT

O.A. No 521 of 2014 was filed seeking a stay of construction of the Kanhar Irrigation Project in Uttar Pradesh which was disposed of by the Tribunal on 07.05.2015 with directions to constitute an Expert Committee which would submit its report in relation to certain directions including the rehabilitation scheme of the project, implementation of forest clearance, and preventive measures for preservation of ecology and biodiversity of the area. The Project Proponent ["PP"] was directed only to complete the underway construction work and not to undertake any construction activity without the recommendation of the committee. The report of the committee was submitted on 31st December, 2015.

This present Application was filed under Sections 25 and 26 read with Section 28 of the NGT Act, 2010 read with Order 39 Rule 2A of the Code of Civil Procedure, seeking stringent action against the authorities for violating orders of the tribunal, and the issuance of directions including restrictions upon respondents from undertaking construction activity which was alleged to be a new construction by the applicant. It was also submitted that the State had not adhered to various other directions of the Tribunal.

The Tribunal held that deficiencies in the report/failure to implement directions would not invite penal action, and in any case found the case to be still open as the report with respect to the directions imposed on the project proponent and their implementation was still pending consideration. The tribunal also took note of the fact that huge public investment had been made in the project, and the respondent had explicitly stated that no new construction was undertaken. Thereafter, the Application was dismissed.

Jatinder Singh & Anr

v.

Union of India & Ors

Original Application No. 495 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Justice M.S. Nambiar, Hon;ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Mining Activity, Environmental Clearance, Role of State Government
Decision: Allowed
Date: 19 February 2016

JUDGMENT

The petitioners in Writ Petition titled Jatinder Singh & Anr v. Union of India & Ors were erstwhile holders of mineral contract and mineral concessions, who challenged the constitutionality of the EIA Notification dated 4th April, 2011 issued by the Ministry of Environment, Forests and Climate Change ["MoEFCC"]. As per this notification, projects covered under Category A [including mining projects more than 50 hectares] or B [including mining projects more than 5 but less than 50 hectares] would require prior Environmental Clearance [EC], but does not mention whose responsibility it is to seek prior EC. An amendment was made to specify that the Project Proponent has to seek prior EC, and the petitioners filed a petition against such amendment, on the ground that onus is on the State which grants mining leases to the parties. The Supreme Court upheld the constitutional validity of the notification. However, the CEC had made certain recommendations in relation to the various applications regarding the matter before the Hon'ble Court and the Punjab and Haryana High Cour and the MoEF was expected to file a response thereto. With respect to this, the matter was transferred to the tribunal. It was the case of the MoEF that the Notification was a comprehensive mechanism dealing with all stages, but the CEC recommended the constitution of an exclusive independent regulatory body for mining lease having an area of 50 hectares and above, and MoEF expressed willingness to consider this. MoEF also stated that EC granted stipulates a large number of conditions to mitigate adverse environmental impact of mining, but the CEC took the view that compliance mechanism are lacking in many respects. CEC also recommended that there should be no disparity between major and minor mining projects, and both should require EC; to which the MoEF was in agreement. The CEC recommended that the State Government should be a special invitee to ensure that EC is not obtained on the basis of factually incorrect information, but the case of the MoEF was that proper coordination amongst the various departments of the Government would not be possible as information involved is multidisciplinary. However, MoEF was considering the establishment of a Decision Support System to verify the information in the EIA Report. The CEC further recommended an authority to deal with erring project

proponents, to which the MoEF responded that PPs submit half yearly compliance reports, and the conditions of the ECs are monitored by the Regional Offices.

The tribunal noted that there is lack of proper supervision of the conditions of the ECS, and held that a regulatory body must first, impose necessary conditions in the interest of the environment, and second ensure their implementation; where failure of either two leads to failure of executive function. It was further held that concerned departments of states must give their inputs regarding the ingredients that help in proper enforcement of the provisions of the notification, and that both the MoEF and the SEIAA should call for a report prior to the stage of preparation of ToR from the departments of the State Government to help in the verification of data sated in the application. Finally, the tribunal held that the Notification has a mandatory character but still requires an implementation and enforcement mechanism, and a more specific time schedule in light of the principle of Sustainable Development/need for expeditious disposal of application, in addition to a better defined role of the State Government. The tribunal therefore disposed off the application by issuing some interim directions till such time the gaps in the Notification were not filled up.

T. Thankaraj
v.
S. Thangaraj & Ors
Application No. 58/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Air Pollution, Noise Pollution
Decision: Dismissed
Date: 22 February, 2016

JUDGMENT

This application was filed seeking a direction to remove the S.T. Hollow Blocks Industry run by the 1st respondent in a village situated in the Kanyakumari District and for a permanent injunction restraining the Health Inspector and District Collector from granting licenses or a non-objection certificate to the 1st respondent.

The applicant submitted that the unit run by the 1st respondent was causing air and noise pollution by the use of machinery and frequent loading and unloading by heavy vehicles as well as pollution of the river Sittaru by diverting wastewater from the unit into the river, which lead to the Thirparappu Waterfalls. According to the applicant, the respondent had no obtained the mandatory No Objection Certificate for running the unit at the premises and for the reliefs prayed for, he also filed a suit before the High Court of the Principal District Munsiff as well as a Civil Revision Petition in C.R.P before the High Court of Madras, Madurai bench to expedite the previous suit, prior to filing an application before the Tribunal.

According to the respondents, the Unit was stated to have been inspected and all pollution control measures had been adopted by raising a compound wall along the side of the complainant's residence, shifting the godown to an alternative site and providing tree sapling so as to mitigate noise and dust pollution; the noise level was also found to be within permissible limit. Further inspection revealed that the unit was not generating any trade effluent either.

Therefore, the Tribunal directed the Pollution Control Board to closely monitor the unit and to check whether or not the 1st respondent unit was continuing to comply with all the conditions. The application stood ordered, with no order as to costs.

Puducherry Environment Protection Association
v.
Union of India
Application No. 154/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Water Withdrawal, Lake, Wildlife Protection, Bird Sanctaury
Decision: Allowed
Date:22 February, 2016

JUDGMENT

This application was filed seeking permanent injunction restraining the respondents from withdrawing or permitting the withdrawal of water from Oussudu Lake for any drinking water project in violation of the Wetland (Conservation of Management) Rules, 2010 the Wildlife Protection Act, 1972 the Environmental (Protection) Act, 1986 and the Biological Diversity Act, 2002. According to the applicant, the lake is a declared Bird Sanctuary and the Government had no authority to draw water for any purpose without permission from authorities under the above said Act.

However, the 5th respondent (The Chief Conservator of Forest) stated the Public Works Department would withdraw water only after obtaining permission from the competent authority, i.e. the National Board for Wildlife, New Delhi and on that date of filing the application, the PWD had not been drawing any water.

The Tribunal clarified that unless all the authorities permitted the Government of Puducherry, no water should be drawn by the Govt. for drinking water purposes. It also stated that unless the applications were made and being considered by the MoEF, the restriction regarding the withdrawal of water would continue to be in operation.

With the above direction, the application was closed with no order as to costs.

M/s. Global Gases India Pvt. Ltd.
v.
Tamil Nadu Pollution Control Board & Ors
M.A. No. 16 & 17 of 2016 in Unnumbered Appeal of 2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. P.S. Rao
Keywords: Condonation of Delay, Limitation, Jurisdiction
Decision: Dismissed
Date: 23 February, 2016

JUDGMENT

The applications were filed by the appellant to condone delay of 354 days in representing appeal against the order of the Tamil Nadu Pollution Control Board which had set aside the consent order issued to the project proponent. The appellant stated that due to change in the personnel following up on the case in the appellant company, the delay in question had occurred. It was contended that the order passed by the Board was brought to the knowledge of the proposed appellant by the Group Internal Audit Head and the appellant had been under the impression that the appeal had already been filed, however, counsel for the appellant had informed that he had not been instructed to follow up, and hence he had not pursued the appeal. The counsel had also applied for a change of Vakalat, after which, the appeal was filed, but there had been further delay due to certain defects in the papers, due to which the appellant had prayed for condonation of 354 days delay.

It was contended by the appellant that the Tribunal, which is performing judicial function, has got inherent powers to condone delay in re-presentation in cases where sufficient cause is explained and in order to render substantial justice on merits of the case, it relied upon the judgment in *D. Muralidharan* v. *Chinnappan (died) & Ors.*

The Hon'ble Tribunal held that its jurisdiction was limited within the provisions of the National Green Tribunal ('NGT') Act, 2010, which was a self-contained code, and that it was empowered to provide effective and expeditious disposal of cases relating to environmental protection and the likes. Referring to provisions of the NGT Act, such as Section 16 and 19, the Tribunal observed that the NGT Act also contemplates that the Tribunal should dispose of the application within a period of 6 months, and would not be bound by provisions of the Civil Procedure Code. The Tribunal concluded that it had inherent powers of a civil court, however, only under stringent conditions. It referred to judgments in *Shree Ram Construction Co.* and *State of Goa v. Western Builders*, and concluded that delay in "re-filing" which is an inherent power of the civil court under Section 151 of the CPC, is different from delay in filing the original application under the NGT Act, and must be construed more strictly.

The Tribunal held that the reasons for delay in the present application had not been so compelling as to warrant condonation, and hence, the application was dismissed.

M.C. Alias
v.
State of Kerala & Ors
Application No. 314/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Metal Crusher Unit, Air Pollution, Noise Pollution
Decision: Dismissed
Date:23 February, 2016

JUDGMENT

This application was filed against the metal crusher unit of the 5th respondent which was causing dust and noise pollution. The matter had been initiated in the High Court of Kerala which was subsequently transferred to the Tribunal.

In a report filed by the State Pollution Control Board, it was stated that the noise level and dust particles were above the permissible limits. It was also recorded that the unit had been running on partial load due to lack of storage facility, and this led to increase sound and dust levels.

However, the 5th respondent had submitted that there were certain rectifications which had to be carried out, so that the levels of dust and noise pollution were within the required standard. Therefore, the Hon'ble Tribunal directed the Board to continue to monitor the Unit and made it clear that in the event of finding the dust particles and noise level beyond the permissible limits, it would always be open to the applicant to approach the Tribunal.

With the above directions, the application was disposed of.

V.D. Majeendran
v.
State of Kerala & Ors
Application No. 306/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Coastal Zone Regulations, Sewage treatment plant
Decision: Allowed
Date:23 February, 2016

JUDGMENT

This application was filed before the Kerala High Court by residents of Ernakulam District in Kerala seeking for declaration of the land filling and construction of the sewage treatment plant in Palluruthy Village as illegal and in violation of the provisions contained in Kerala Conservation of Paddy Land & Wetland Act, 2008, issuance of writs of mandamus directing the respondents to refrain from carrying out construction activities, for them to take action against the persons responsible for destruction of mangroves and conversion of wetland and to restore the land to the original position after removing the soil which filled the land.

Subsequently, the writ petition was transferred to the Tribunal and it was made clear that the Tribunal could only decide the claim related to the alleged construction activities carried on in furtherance of Ext.P1., which was a tender notification issued by the 4th respondent calling for tenders for land filling works for the Sewage Treatment Plant. Herein, the applicant contended that the land allotted for putting up the STP, when reclaimed, was illegal for the reason that it was covered under the CRZ Notification 2011, thereby prohibiting the intended activities.

The 5th respondent, Kochi Corporation, had submitted an application to the 8th respondent, Kerala State Coastal Zone Management Authority ('KSCZMA'), seeking CRZ clearance while the application was pending in the High Court, who then chose to pass an order, a power which otherwise only lies with the Ministry of Environment, Forests and Climate Change (MoEFCC), accepting the proposal subject to the condition of there being a mangrove afforestation.

Therefore, the Hon'ble Tribunal set aside the order of the KSCZMA as illegal. Moreover, in deciding whether the impugned tender should have been allowed to continue or not, the Tribunal was of the view that the tender notification had no leg to stand in the light of law. It reasoned that if the project proponent was interested in floating the said tender, the same could be done only after obtaining clearance from the authorities and mere quashing of the reclamation itself did not confer any power on the project proponent to proceed with the project at all.

Therefore, the notification was set-aside with orders to the 8th respondent to reconsider the application as per the CRZ notification and make recommendations to the MoEF, which would pass appropriate orders. The Tribunal also directed the 5th respondent to pay a sum of Rs. 5 lakhs to be credited to the Environment Fund, maintained by the Kerala State Pollution Control Board. In addition, the 4th respondent was directed to Rs. 50,000 to the applicant, as costs.

U.KamalakshaPrabhu
v.
Union of India & Ors
Appeal No. 80/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Environment Clearance
Decision: Dismissed
Date:25 February, 2016

JUDGMENT

In this application, the Environmental Clearance granted in favour of the 2nd respondent by the 1st respondent was challenged. The applicant, however, stated that he sought withdrawal of the application, with liberty to challenge the Stage-II Forest Clearance if given by the government.

Accordingly, the application was dismissed.

Pondicherry Institute of Medical Sciences
v.
Union of India
Application No. 214/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: EIA Notification, 2006, Construction projects
Application Status: Dismissed
Date:25 February, 2016

JUDGMENT

This application was filed by the Pondicherry Institute of Medical Sciences, represented by its Chairman with regard to a statutory amendment to the Environment Impact Assessment ('EIA') Notification, issued by the Ministry of Environment, Forests and Climate Change (MoEFCC), in respect of the proposed construction of a hospital within the institute beyond 20,000 sq. m up to 1,50,000 sq. meters. MoEFCC, by way of clarification, had stated, "in case of medical universities, the component of hospitals will continue to require prior Environmental Clearance ('EC')" and therefore, various circulars were sent to the applicant directing them to obtain EC in respect of the construction.

The senior counsel submitted that the term college insofar as it related to medical colleges should include hospital as well as that forms a part of the college and submitted that for a medical college to start, it must necessarily have a hospital along with the prescribed bed strength and therefore, the term "college" should be read as including hospitals attached to the college. According to him, the clarification issued by the Government was against the spirit of the EIA Notification, 2006.

However, the Tribunal was of the view that in so far as the construction of the hospital related to the environment issue, it did require Environmental Clearance for the reason that there was every possibility for generating medical waste in the hospital. Subsequently, the applicant was directed to make the necessary application to the SEIAA to consider the same and pass appropriate order, until which the hospital component of the institution was not allowed to start functioning.

With the above directions, the application was disposed off.

S. Savithri
v.
The State of Tamil Nadu & Ors
Application No. 174/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Tree-cutting, Compensatory Afforestation
Decision: Allowed
Date:26 February, 2016

JUDGMENT

This application was filed seeking a direction against respondents 1-4 to take action against the 5th respondent for cutting the trees standing in the park area in Besant Nagar, Chennai and issue directions to preserve such trees and shrubs which were several years old.

This park area belonged to the the Government Officials' Co-operative Housing Society Ltd. ('5th respondent'), which allegedly came into existence with an objective of providing residential flats to the retired government employees who were not in a position to construct houses of their own, therefore, the park was maintained by the 5th respondent for the benefit of its members and their families.

When the story of the cutting of trees was published in the newspaper, the respondent stated that it was just a one sided version as really, what was done to the trees, was for the benefit of the members as the trees were infested with vermin and had to be pruned to make the park clean and except one tree, no other tree was cut from the root. The pruning was also carried out based on the principle that trees such as Gulmohar were not suitable for coastal areas and were easy victims of cyclones. An expert appointed by the Tribunal confirmed these findings and also stated that the only issue in the pruning exercise was the excess pruning of branches, which could have been avoided.

Further inspection clarified that one Neem tree had been uprooted from the concerned authorities, another one had a certain infections and in so far as the Gulmohar trees, they were required to be properly maintained and excessive branches were to be cut periodically. Here, the Tribunal explored the definition of pruning, which is stated to be a regular part of plant maintenance. Keeping in mind the kind of pruning described by the experts on the plants and trees, done by the 5th respondent, the Tribunal was of the view that it was not merely an excessive pruning but a conscious attempt to cut the trees. Further, the Tribunal also stated that Chennai was deficient in such a number of trees, and carrying out such activities would amount to allowing nature to be destroyed and in the name of pruning, nobody should be permitted to touch the trees.

In view of this matter, the Tribunal concluded that what was done by the 5th respondent was cutting of trees and they had to be imposed with necessary obligations. Accordingly, the application was disposed with directions to the respondent to plant 70 trees of native species in the entire stretch of Besant Nagar, the nature of which would be decided by the Corporation of Chennai in consultation with the Forest Department. Directions were also given to maintain the trees for a minimum of 5 years or till the plants had grown as well as payment of Rs. 10,000 towards the Environment Relief Fund and Rs. 5000 each as the Advocate Commissioner Fee and to the applicant.

Accordingly, the application was allowed.

Themrie Tuithung & Ors.
Vs.
State of Manipur & Ors.
Appeal No. 04/2014 (EZ)

Coram: Justice Pratap Kumar Ray, Dr. P.C. Mishra
Keywords: Forest Clearance, Environmental Clearance, Compensation, Forest Rights
Decision: Dismissed
Date: 26th February 2016

JUDGMENT

The appeal was filed challenging the order of Govt. of Manipur permitting diversion of 595 hectares of forestland for construction of the Thoubal Multipurpose Project (Mapithel Dam) proposed at the tri-junction of Ukhrul, Senapati and Thoubal districts of Manipur. The appellants who were agriculturists and forest dependents, were directly affected by the construction of the said project and had therefore challenged the same before the Tribunal.

The Tribunal noted that the appellants have challenged this project earlier on grounds of violations of the Forest (Conservation) Act, 1980 and Forest Rights Act, 2006 in OA No. 167 of 2013. The appellants in the said application prayed for staying the project on the grounds that the State was going ahead with the project without any approval from MoEF which was a violation of the statutory requirements. However, the State in response to the same pleaded that the appellants had already been compensated and the Government having spent a huge amount of money on the project, thus, any stay would be detrimental to the public interest. The Tribunal in the said OA granted status quo till necessary permissions were accorded to the project. Upon grant of the final forest clearance by the State (which was now challenged in the appeal), the Tribunal vacated the stay and disposed of the original application with a direction that it would be open to the aggrieved parties to work out their remedy as per law. It further stated in the order that the State would comply with the conditions stipulated in the FC order. The Tribunal took the view that the said order was not challenged by the appellants before the Supreme Court and therefore the same had gained finality.

The appeal was heard on merits. The contentions of the appellants were that appeal was challenged on the grounds that the forest diversion proposal was not in the public domain on the MoEF website, that mandatory site inspection was not conducted, that there was a violation of the circular of MoEF's Forest Conservation Division regarding mandatory prior consent of affected villages as per the Forest Rights Act, 20016 and that the current construction of the dam was illegal and in violation of the conditions of forest clearance. On the basis of the same, the appellants prayed for quashing of the forest clearance order. The respondents, on the other hand, submitted that the appeal was barred by Res Judicata

and that the project was of great public interest. They were stated that the village Authority is equivalent to Gram Sabha which had sold the land after taking consent of the tribal villagers. Further, that the appellants did not have locus standi to file and maintain the present appeal as the ones who were affected by the project had already taken compensation and that the Planning Commission had cleared the project before the enactment of the Forest (Conservation) Act, 1980. The MoEF took a stand that the project was an ongoing project which could not have been granted EC under EIA, 1994.

The appellants in the present matter had also sought an interim injunction on further construction of the dam on the premise that the same had submerged the fields of the villagers jeopardizing their livelihood. Based on the same, the appellants prayed for appointment of a Court Commissioner. However, the Court Commissioner in its report recommended for continuation of the construction stating that stopping the same at the current stage would have resulted into breaching of the dam which could have caused immense damage to public and property. On account of the same, the appellants pleaded that though the demolition of the dam could not be done at this stage, however, the reliefs could be restricted to the compliance of the conditions in the impugned order which stipulated that the forest land could be diverted for non-forest purposes only after the impugned order is complied.

Considering the submission of both the counsels, the Tribunal held as the following:

Applying the principle of estoppels, approbate and reprobate and doctrine of election in view of the Supreme Court judgments, the Tribunal held that the appellants who received R&R package as compensation were not entitled to question the forest clearance and were therefore debarred from approaching the Tribunal in appeal. It further held that the appellants, the villages of which were not affected by the construction of the project would not be treated as persons aggrieved. However, the Tribunal also held that appeal would not be barred by res-judicata as it challenged the order of the State Government under section 2 whereas the Original application filed earlier was against the illegal construction carries out without any forest clearance. and that it was not barred by Res Judicata. On the issue of EC, the Tribunal noted that since the construction of the project commenced prior to the coming into force of the EIA Notification, 1994, the same was not required for the present project. However, it was held that although obtaining EC was not a mandatory requirement, since the project proponent had undertaken the exercise of preparing EIA and EMP report, the same would be implemented during and post the construction. On the applicability of the Forest (Rights) Act, 2006, the Tribunal was of the view that the project had commenced since 1980 when the FR Act was not born and as a result, the same should not come as a hindrance at this stage. On the issue of violation of the FC Act, 1980 the Tribunal noted that the project work was executed on forest and non-forest land without obtaining prior forest clearance for which additional penal conditions were imposed in the Stage II approval. However, the Tribunal held that since 80% of the works had already been completed and that there was no way to demolish it

as it would cause disaster by flooding villages and lead to increased costs, in the present case, sustainable development was applicable to allow the completion of the project.

The Tribunal did not allow the quashing of the impugned Forest Clearance and dismissed the appeal on merits, however with a liberty to the appellants to approach the Tribunal within six months in case of non-compliance of the conditions stipulated in the impugned order.

Green Cross, World Environment Protection Action Group
v.
State of Kerala & Ors
Application No. 460/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Food Park, Ecologically fragile areas
Decision: Dismissed
Date: 29 February, 2016

JUDGMENT

The applicant had initially moved the High Court of Kerala ('HC') seeking directions to preserve the ecologically fragile Varyad Estate and to quash proceedings initiated for acquisition of the Estate. The HC had held that the acquisition was bad in law, and the Biodiversity Board should be consulted before the setting up of a Mega Food Park. Therefore, an interim stay of dispossession had been granted until further orders. A writ appeal had been filed against the said stay in the HC, which was pending while the proceedings before the tribunal.

The applicant contended that it was incumbent on the part of the Government to consult the Biodiversity Board, and also brought to the notice of the Tribunal an order wherein the Government, after examining the issue, had permitted the District Collector to proceed with the proposal of the acquisition.

However, the Tribunal decided that there was no cause of action for the applicant to raise his voice at this stage, as the matter was still pending before the HC. The application was disposed of with liberty to the applicant to approach the Tribunal if he were affected by the acquisition at a later point.

Accordingly, the application was dismissed.

Mukesh Yadav

v.

State of Uttar Pradesh & Ors

Original Application No. 133 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Ground water, Non-Compliance, Failure of Statutory Authorities to Regulate
Decision: Allowed
Date: 29 February 2016

JUDGMENT

The applicant, a member of Krishan Sangharsh Samiti, filed an application against the Capital Athena Builders Visrakh [Respondents No. 4 and 5] for illegally digging up land area for the purpose of construction near village Bishrakh, U.P, and against the respondent authorities for not taking the requisite action. It was the case of the applicant that this construction activity has led to a famine like situation in the villages, as water is oozing out from the construction site/extracted from the ground and thrown into the Hindon River. On the other hand, the PP argued that water is seeping naturally in to the foundation of the proposed building, and only that water is being removed into harvesting pits/artificial ponds, which was recognized as permissible by the Supreme Court in the case of NOIDA v. Vikrant Kumar Tongad. Further, the respondent authorities contended that they have been ensuring compliance with the orders of the Supreme Court, and that no ground water was being extracted, only the excess water that was seeping in was being removed. Additionally, it was the case of the respondents that EC had been obtained for the project from the SEIAA, U.P, and that all construction was being undertaken using water purchased from the STPs of Noida/Greater Noida. Further, it was also mentioned that the PP was using chemicals to promote fast curing of RCC work to reduce the need of water for curing purposes. An inspecting team was constituted which pointed out that there were no dust screens but water was being sprinkled to prevent air pollution, and there were in any case a large number of constructions in the neighbourhood having a potential impact on the ground water of the region, for which the opinion of the Central Ground Water Authority was sought. As per the CGWA, Respondent No.6, the PP was never granted permission for withdrawal of ground water, and that the maintenance of the rain water harvesting structure installed by the PP was extremely poor. At the same time, no borewells were found at the construction site, and documents were furnished to testify the advance payments made by the PP for purchase of STP water/there were adequate arrangements for storage of sewage water at the site.

Therefore, there were two issues for the tribunal's consideration. First, whether the PP had been using ground water for construction purposes, and second, whether the ground

water pumped out from the construction site was covered by the necessary clearances/permissions from the CGWA. With respect to the first question, the tribunal found that the applicant's claims were not supported by documents, and therefore could not be accepted. With regard to the second issue, the tribunal found that the oozing of water was inevitably due to the construction, and not only due to the monsoon season, and therefore the excavation had reached below the level of the water table.

The tribunal elaborated the socioeconomic consequences of weak or non-existent ground water management on economic growth, local livelihoods, and fiscal stability. It was held that the PP has not taken effective measures for recharge of ground water, a condition specified in the EC, and no permission from the CGWA was taken. Further, the tribunal found the CGWA, UPPCB, Greater NOIDA Authority and the State to have failed their statutory obligation to regulate such activities. Additionally, the PP was also found to have commenced construction without obtaining the NOC, once again violating the conditions of the EC. Therefore, the tribunal directed the PP to pay compensation under the polluter pays principle, directed the constitution of a committee to ensure restoration of the environment, and that the Greater NOIDAA Authority with the CGWA issue guidelines for future constructions to take into account. Thereby, the application was disposed of.

Mr. M. Gandhi

v.

The District Collector & Ors

Application No.23/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Construction, Water Body, Free flow
Decision: Dismissed
Date: 1 March, 2016

JUDGMENT

This application was filed seeking a permanent injunction against the respondents from carrying out construction activities on the water body situated in the disputed area of Tindivanam Town as they were preventing the free and natural course of water flowing from Murungapakkam Eri to Tindivanam Eri. However, the respondents denied such allegations, and asserted that they were planning to build a box culvert of 3m x 3m which would ensure that the alleged interference with the flow did not happen. It was stated by the applicants that if the project did not interfere with the flow of water, the applicants would not have any reservations against it.

In the light of the above statements made by the respondent and the applicant, the Hon'ble Tribunal disposed of the application with the view that if the project proponent had correctly stated that the activities were not obstructing the water flow, the applicant would not have any objection. It also allowed the project proponent to construct the abovementioned culvert at the same location and permitted the applicant to approach the Tribunal if the respondents went against the said undertaking and attempted to prevent the free flow of water.

Accordingly, the application was disposed of.

M/s. Sonal Process
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Application No.31/2016 (SZ)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Dyeing Unit, Consent, Effluent Treatment Plant
Decision: Disposed
Date:1March, 2016

JUDGMENT

This application was filed by the owner of a dyeing unit, which had obtained consent under both, the Air Pollution and Water Pollution Acts for running the unit with the capacity of 96 KLD for bleaching and dyeing of hosiery cloth; consent was given by the Board for running the unit after establishment of the Individual Effluent Treatment Plant.

However, the Board has revoked the consent for various reasons and the prayer in application was for permitted the unit to run by restoration of power supply with the 96 KLD capacities, even though he had established the required system for 300 KLD. The Board submitted that if the applicant undertook and continued carrying on the activities only with the 96 KLD, the Board would not have any objection.

In view of the above submission, the application was disposed of with direction to the Board to consider the applicant's representation and pass necessary orders within two weeks from the current order and after making necessary inspections.

M/s. KMB Foods
v.
The Chairman, Tamil Nadu Pollution Control Board
Appeal No. 100/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Effluent Treatment Plant, Consent
Decision: Dismissed
Date:7 March, 2016

JUDGMENT

This application was filed by a Small Scale Unit carrying on the business of making potato chips and a few types of mixtures and selling the same in small shops in and around the area. The appellant stated that he had been carrying out his business in his private land for which the patta of the said land had been granted, as had all the necessary permissions from the concerned authorities; even the oil being used was being reused on the same day.

However, the State Pollution Control Board ('the Board') has passed an impugned order under the Water and Air (Prevention and Control of Pollution) Acts, directing the closure of the unit on the basis that it had been operating without consent under the Hazardous Waste (Management and Handling) Rules, 2008 and the Effluent Treatment Plant ('ETP') had not been installed.

The Board was of the view that if the appellant unit made an application for consent, it would be considered without insisting to follow the undertaking given by the appellant to install an ETP. With this, the appeal was dismissed with directions to the Board to inspect the unit and pass appropriate orders within one week from the date of receipt of the application for consent. The appellant unit was restricted from carrying out any activities till the consent order was passed by the Board.

Mr. Yuvaraj
v.
Tamil Nadu Pollution Control Board &Ors
Appeal No. 54/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Consent, Effluent discharge
Decision: Allowed
Date: 7 March, 2016

JUDGMENT

This application was filed against the order of the State Pollution Control Board ('Board') under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, directing closure of the appellant's unit and disconnecting its power supply.

This action was taken in response to the Tribunal directing the Board to take necessary steps in respect of the units which were carried on in violation of law and as such, the appellant's unit was found to have been discharging the RO reject into the River Coovam without necessary treatment.

According to the appellant, the unit was situated far away from the river, leaving no questions as to the discharging of the effluents. They also denied any inspection being carried out by the authorities to decide the same as well as non-issuance of a show cause notice, which made the order liable to be set aside due to violation of principles of natural justice. The respondent had argued that a proper inspection had been conducted, and a show-cause notice had been issued before the action had been taken, but regardless of which, the appellant had not obtained consent to establish from the Board.

The Hon'ble Tribunal held that the impugned order should be set aside due to a *prima facie* lack of a show cause notice. It also permitted the appellant to make an application for the purpose of "consent to establish/operate", to be considered by the Board after conducting inspections on merits and passing orders expeditiously within 10 days from the date of receipt of the application.

With the above direction, the appeal was disposed of.

P.P. Issac
v.
The District Collector & Ors
Application No. 304/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: Quarrying, License
Decision: Dismissed
Date:7 March, 2016

JUDGMENT

This application was filed as a writ petition before the High Court of Kerala challenging the order of the Revenue Divisional Officer by which he had granted permission for quarrying, subject to the licence issued by the Mining and Geology Department and conditions stipulated by other departments. Subsequently, the application was transferred to the Tribunal.

The application prayed for a direction against the Board to prohibit the 5th respondent, Ms. George, from carrying on quarrying operation based on a consent letter being made by the Board; the lease period granted to Ms. George had expired in 2012.

The Tribunal decided that considering that the lease period had already expired, there was no necessity in keeping the current application pending and accordingly, the application stood closed. It also gave directions to the authorities to consider the application on merits, in the event of the applicant making any application to the authorities concerned for the grant of consent.

Accordingly, the application was disposed of.

Nutfar Sardar & Anr
Vs.
Govt. of West Bengal and Ors.

Original Application No. 43/2015 (EZ)

Coram: Hon'ble Justice Mr. Pratap Kumar Ray, Prof. (Dr.) P.C. Mishra
Keywords: Slaughterhouse, Solid waste, Air Pollution, Water Pollution, Consent
Decision: Disposed
Date: 07 March 2016

JUDGMENT

The application was filed by two residents of Howrah district aggrieved by the illegal operation of a slaughterhouse near their houses. The grievance of the applicants' was that the slaughter house where around 25-30 animals were killed on a regular basis, lacked scientific management of sewerage system for the discharge of animal blood and other wastes, which in turn decomposed on the site causing foul smell and making it difficult for the residents further leading to various lungs, skin and breathing diseases. They also contended that these slaughterhouses operated without any necessary permission from the authorities. It was also brought to the notice of the Tribunal that pertaining to the said grievance a Writ petition was filed before the Calcutta High court wherein the matter was referred to this Tribunal. The applicants being dissatisfied with the inaction of the authorities had sought specific direction from the Tribunal to stop and remove the slaughter house from the given area.

The Tribunal considering the said grievance, directed the Pollution Control Board and Superintendent of Police to see that no slaughterhouses operate without any consent from the Pollution Control Board. Pursuant to the directions of the Tribunal, inspections of two slaughtering units in the area in question was made which revealed the fact that the units were operating without consents from the Board and without installation of any effluent treatment plants thereby creating unhygienic conditions in the area. The authorities submitted that post the direction and inspection by the Board, the slaughtering activities were terminated and a closure order was issued against the slaughterhouses.

The Tribunal while dealing with this application, threw light upon the environmental impacts caused by the slaughterhouses wherein it was observed that most of the units lacked basic amenities and suffered from low hygienic standards posing major health and environment hazards and that this problem had increased due to increase in illegal slaughtering units. The Tribunal also considered the amount of waste generated and concluded that lack of proper waste management system in these units had led to land degradation, air and water pollution. The Tribunal observed that the private respondents did not have any valid consents as required by the Pollution Control Board and were

operating their units in violation of the Water (Prevention & Control of Pollution) Act 1974 and the Bio-Medical Waste (Management and Handling) Rules 1998. The Respondents were held accountable for breaching the pollution norms under the aforementioned acts. The respondent authorities were also held responsible for allowing illegal operation of slaughtering units. Thus, by invoking the polluter pays principle, the Tribunal imposed environment compensation of Rs. 2 lakhs against 4 respondents and Rs. 1 lakh against the other. It also directed the PCB to formulate siting policy to prevent establishment of small slaughterhouses near residential houses and the CPCB guidelines to be followed in case of medium and large scale units Accordingly, the O.A was disposed of with costs.

Rohit Choudhury
Vs.
Union of India & Ors

Original Application No. 25/2014 (EZ)

Coram: Hon'ble Justice Mr. Pratap Kumar Ray, Prof. (Dr.) P.C. Mishra
Keywords: Forest Conservation, Forest Clearance, Wildlife Clearance
Decision: Disposed
Date: 07 March 2016

JUDGMENT

The application was filed by the applicant challenging the work undertaken by the government for a river project within Manas National Park, a UNESCO natural heritage site, in violation of the provisions of the Forest (Conservation) Act, 1980 and the Supreme Court directions dated 14.02.2000 passed in I.A No. 548 in Writ Petition No. 202 of 1995. The applicant submitted that the project was initiated without obtaining Forest Clearance and permission from the National Board for Wildlife, both of which are mandatory for carrying out such project in the given region. Considering that the area in question is home to a wide variety of flora, fauna and wildlife, the applicant sought intervention from the Tribunal praying for restraining all activities related to the project and restoring the area to its original position.

The Respondent, in its reply, submitted that the project was important considering that the same would prevent unprecedented floods, land erosion and felling of trees caused due to river Beki during the monsoon season. The respondent while denying the requirement of any clearance for the same, viewed this project as one that did not require the approval of the Central Government. Furthermore, the Respondent also submitted that the project had been examined by the Central Water Commission and had received administrative approval from the State Government.

The Tribunal at first ordered an interim stay on all the ongoing work as according to the applicant use of heavy machineries in the said ecologically sensitive region was causing threat to the wildlife and biodiversity. The applicant also pointed out through a RTI reply from the Wildlife Division, Ministry of Environment & Forest that neither any proposal from the State Government was made nor any site inspection was undertaken by the Ministry for the said project.

Though the respondents' objected the application for being not maintainable under the NGT Act, the same was rejected by the Tribunal holding that the terms 'locus standi' and 'aggrieved' have been liberally interpreted in environmental jurisprudence and relied upon various judgements of the Hon'ble Supreme Court and the Principal Bench, NGT dated 14.12.2011 in Vimal Bhai vs Union of India, in this regard. On the objection to the

application being time barred, it was held that the activity is a continuous cause of action in absence of statutory clearance.

The Tribunal concluded that obtaining prior approval from the Central Government under the Forest (Conservation) Act, 1980 and Wildlife (Protection) Act, 1972 is a mandatory requirement and that the State Government had violated the environmental norms by undertaking the project without any approval. Confirming the interim order of stay, the Tribunal directed the respondents to not undertake any work relating to the project without prior approval under the given statutes.

Accordingly, the application was disposed of imposing litigation costs of Rs. 50,000/- upon State of Assam to be given to the applicant.

M/s. K.R.S Foods
v.
State of Tamil Nadu & Ors
Appeal No. 101/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Consent, Effluent Treatment Plant
Decision: Dismissed
Date: 9 March, 2016

JUDGMENT

This application was filed by the owner of a small-scale unit carrying on the business of making potato chips and savories and selling the same to small shops in and around the areas. It was stated that the applicant had obtained the necessary permission from all the concerned authorities. However, the State Pollution Control Board passed an impugned order directing the closure of the unit on the grounds that the unit was operating without consent from the Board and was in violation of Hazardous Waste (Management and Handling) Rules, 2008 as it had not established an Effluent Treatment Plant ('ETP'), even though the applicant had undertaken to install the same.

However, the Board stated that the if applicant made an application for consent, despite not complying with the undertaking of installing an ETP, it would be considered. The Tribunal, thus, dismissed the application directing the appellant to make an application for consent and the Board to inspect the unit and pass order within one week from the date of receipt of the application from the appellant.

With the above direction, the appeal stood disposed of.

YagoobVarkey
v.
The State of Kerala
Application No. 379/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Environment Pollution
Decision: Dismissed
Date:9 March, 2016

JUDGMENT

This application, originally filed before the High Court of Kerala, was transferred to the Tribunal, claiming the reliefs relating to issuance of writs directing and restraining to the respondents from establishing plywood factories and carrying out any other activities relating to the same, which were causing pollution of the air, water and environment.

The respondents submitted their replies stating that they had fulfilled all conditions required to control pollution in the disputed area and whilst the Tribunal seemed satisfied by the same, it further directed the Board to monitor the said compliance and to take action against the respondents for failure to comply.

With the above directions, the application was disposed of.

M/s. Industrial Mineral Company
Vs.
The Member Secretary, Tamil Nadu State Coastal Zone
Application No. 178/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Shri P.S Rao
Keywords: Environmental Clearance, Coastal Regulation Zone
Decision: Dismissed
Date: 9 March 2016

JUDGMENT

This application was filed against the operation of condition no. 5 of the Specific Conditions of Environmental Clearance dated 21.03.2006 granted by the MoEF to the applicant company which was for the purpose of extracting rare minerals from the sea shore. The applicant objected the condition which stipulated that, "The Pre-Concentration Plant should be installed only outside the CRZ area" and a letter issued by the Tamil Nadu Coastal Zone Management Authority, by which the said authority had directed the applicant to stop the above said activity of carrying on the Pre-Concentration Plant within the CRZ area and violating the EC by tapping ground water for mineral concentration plant. It was also observed that the plant had been functioning adjacent to the sea and with diesel being stored in 1000 liters' capacity steel tank; it had altered the landscape and beach profile, thereby causing damage to coastal ecosystem.

The applicant stated that the plant did not amount to industrial activity and was connected with sea-shore facility and the EC itself was for the purpose of mining rare minerals and if the plant was permitted to be carried outside the CRZ area, he would be put to enormous loss apart from causing pollution in carrying large quantities of sand which contains rare minerals.

After hearing the applicant and the respondents, the Tribunal was of the view that in as much as the plant could be carried out safely outside the CRZ area, there was nothing wrong in imposing a condition for establishment of the same. Further, the applicant was not permitted to have the clause struck down. The Tribunal also clarified that the plant was indeed an industrial activity and was neither directly related to water front nor to needing fore-shore facility and could be done in the terrestrial area outside the CRZ. As for the contention relating to the possible loss caused to the applicant, the Tribunal stated that this was a part of his business activities, which he had to look after himself.

Accordingly, the application was dismissed.

Suo Motu

v.

Principal Secretary to Government, Department of Environment, Kerala & Ors.

Application No. 24/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Dr. R. Nagendran
Keywords: N/A
Decision: Disposed
Date: 10 March, 2016

JUDGMENT

The application was taken up by the Tribunal based on the report published in "the Hindu" dated 29.01.2016 titled Alarming rise in coliform count in Pampa. In a reply affidavit filed by the 4th respondent, the District Collector, it was stated that hearing in matters relating to the upkeep and maintenance of the Sabarimala ecosystem had been seized by a Specially Constituted Bench of the Kerala High Court and the Special Bench was taking up the matters on a regular basis. It was also stated that all the issues that were the subject of this Suo Motu application were also a part of the said proceedings before the Hon'ble Kerala High Court.

In view of the said submissions and that the Hon'ble Kerala High Court had seized the matter, the application stood closed.

A. Karunyaraj & Anr.
v.
Tamil Nadu State Pollution Control Board & Ors
Application No. 113/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Air Pollution
Decision: Disposed
Date: 10 March, 2016

JUDGMENT

This application was filed against the activities of the J.A.D. Rubber Band Factory, the 6th respondent and M/s. Auto Saw Mill, the 7th respondent, seeking directions to stop pollution to the houses and other surrounding areas of the applicants. The same had come before the Hon'ble Tribunal by way of transfer of a writ petition filed by the applicants in the Madras High Court ("HC"). The said writ petition had been filed in HC subsequent to a prior writ petition, which was dismissed with directions to the respondents to file compliance with the Tamil Nadu State Pollution Control Board ("TNPCB"), and liberty to the applicants to challenge the consent order given to the said respondents by TNPCB.

As per the direction of the Tribunal, the Board conducted an inspection, which made it clear that, the pollution norms in respect of various emissions such as sulphur dioxide, nitrogen dioxide and ammonia etc., were within the standards prescribed by the law.

In light of the aforesaid observations, the Tribunal decided that there was no question of depletion of the environment which subsisted. The applicant was, however, given the liberty to work out their remedy in the manner known to law with respect to the claim that the respondents were illegally carrying on industrial activities in a commercial area. The Tribunal also directed TNPCB to supply a copy of the consent order within one week so that it may be challenged by the applicants in accordance with law.

With the above direction, the application was disposed of.

K. Munusamy
v.
The District Environment Engineer & Ors
Application No. 252/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Noise Pollution, Consent
Decision: Allowed
Date: 14 March, 2016

JUDGMENT

This application had been filed against Mr. Ramakrishnan, the 4th respondent, who had been running an auto pressing industry as a tenant. According to the applicant, the noise generated by the 4th respondent's unit caused immense disturbance and noise pollution and the unit was being operated without consent.

The respondent submitted that he had already made an application for consent, which had not been processed due to the pendency of the present application.

The Hon'ble Tribunal observed that there was no restraint on the Tamil Nadu Pollution Control Board ('Board') from processing applications while they are pending before the Tribunal. It was of the view that the work being carried out by the respondent did not cause any noise pollution, as shown by the inspection report. However, the Tribunal stated that the respondent could not be permitted to run the unit without consent from the Board and directed the Board to complete the processing of the application and pass an order expeditiously, within one week from the date of the judgment. It also directed the Board to inspect the unit of the applicant and pass appropriate orders regarding the same.

With the above direction, the application was allowed.

Sabu N.J
Vs.
The District Collector & Ors.
Application No. 258/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Petroleum, Commercial Activity, Forest
Decision: Dismissed as infructuous
Date: 14th March 2016

JUDGMENT

This application was filed against the respondent, namely M/s Bharat Petroleum Corporation Limited, restraining them from starting a petroleum retail outlet or carry out any other commercial activity in the disputed property. The applicant also challenged the proceedings wherein the Additional District Magistrate granted a No Objection Certificate in favour of the respondent to start the retail outlet.

According to the applicant, the disputed area was an ecologically sensitive area and the said property was originally a forestland, which had to be used for cultivation purposes as per the Kerala Land Assignment (Regulation of Occupant of authorised land prior to 01.01.1997) Special Rules 1993, the Government passed order granting patta by way of assignment to the occupants to be used for cultivation purposes. Therefore, the entire terrain area couldn't be used for commercial activity, as it would lead to environmental disaster.

However, the respondent submitted that not only had he obtained permission with regard to the use of the land but had also obtained EC with certain conditions. On the basis of this contention, the Tribunal was of the view that the application seeking for an injunction would not survive and was accordingly dismissed due to the reason that the relief claimed had become infructuous by the subsequent event.

Kappalur B. Saravanan
v.
The Secretary to Government, Water Supply & Local Administration Department, Chennai & Ors
Application No. 61/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Park, Environmental Pollution
Decision: Dismissed
Date: 14 March, 2016

JUDGMENT

This application was filed seeking directions to grant an injunction against the establishment of 300 ground rent ships near a children's park. The applicant submitted that there were already a large number of shops situated in and around the disputed area leading to congestion of traffic, air pollution, water pollution and accumulation of garbage.

However, the Tribunal was of the view that the issues raised by the applicant did not reflect any environmental issue which was likely to be caused. It gave directions as to removal of garbage by the municipality and the Pollution Control Board and stated that in case the applicant was ever affected by the traffic, he could work out the remedy in the manner known to law.

Accordingly, the application was dismissed.

Jothi Kumar V.

v.

Thukaseedharam Pillai & Ors

Review Application No. 01/2016 in Application No. 82/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Prof. Dr. R. Nagendran
Keywords: Review
Decision: Dismissed
Date: 16 March, 2016

JUDGMENT

The Review Application was filed by respondent no. 9 in the main application against the order dated 14.1.2016 by which the review applicant was restrained to carry on mining operation until the permit was renewed.

On the admitted stand of the review applicant that the permit had expired in February and June 2015 and that the review applicant had not been carrying out any mining activity, the Tribunal passed the aforementioned order. The Tribunal found no reason for review and rejected the same.

Lt. Col. (Retd) Sarvadaman Singh Oberoi
v.
Union of India & Ors

Original Application No. 167 of 2014 (PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Ranjan Chatterjee
Keywords: Land conversion, Aravallis, Gair Mumkin Pahar, Polluter Pays Principle
Decision: Disposed
Date: 17 March 2016

JUDGMENT

The application was filed by a resident of Gurgaon working for the conservation of Aravalli Hills, for declaring the proceedings before the Assistant Collector with respect to change in use of land in girdavari from 'gair mukin pahar' to 'agriculture' as illegal and void, and for directing the State of Haryana not to change land use in any land records and declare the entire hilly area of Mangar village as deemed forest under Section 2 of the Forest (Conservation) Act, 1980. Further, the applicant also prayed for restoration of tree cover which was being destroyed by the private respondents for construction of road.

The issue in the application was that the private respondents who were owners of the property (440 acres) falling under the Manger Bani forest and surrounding areas recorded as "gair mumkin pahar" which is a protected area under the Aravalli Hills Notification dated 07.05.1992, had applied for its conversion to the Assistant Collector claiming that the land recorded as "gair mumkin pahar" was agricultural land and therefore sought change in its land use in the revenue records. In pursuant to the applications made by the respondents, notices were issued in the newspaper inviting objections, which made the applicant aware of the said proceedings and against the same, he presented his preliminary objections to the Assistant Collector. The applicant contended that agriculture or road constructions cannot be allowed in the Aravalli areas of Mangar in view of the directions of the Tribunal in Haryali Welfare Society vs Union of India & Ors, OA No. 269 of 2013 wherein the State Government had been directed not to issue permissions allowing fragmentation of areas in village Mangar. It was further stated that the disputed areas fall under section 4 of the Punjab Land Preservation Act,1990 ["PLPA"] and while the identification of forest in terms of the judgment of the Supreme Court in Lafarge Umiam Pvt ltd vs Union of India, (2011) 7 SCC 338 was still under process, in any event the same should be treated as deemed forest.

The Department of Forest in reply to the said application stated that since the areas in question have been notified under PLPA, no clearing or breaking of the same can be allowed. It was also brought to the notice that vide notification dated 04.01.2013 tree felling cannot be done without obtaining permission of the Divisional Forest Officer. It

was further stated that the department had registered a case of forest offence against the Respondent No. 6 for illegal felling of trees and road cutting in the area. Further, the areas in question were crucial from wildlife and biodiversity point of view and therefore required protection from the alleged activities.

The private respondents submitted that they had withdrawn the applications for change of land use before the Assistant Collector and therefore the reliefs sought against them does not survive. The State of Haryana made a submission before the Tribunal that corrective steps were being taken for rectifying the land records changed from gair mumkin pahar to agricultural.

The tribunal in view of the said submissions, observed that the only prayer remaining was regarding the plea to restore the trees and environment in the area. In view of the Forest Offence report, the Tribunal observed that irrespective of the prosecution under the Forest Act, when it is proved that trees were cut and removed without permission and roads constructed illegally, then the Polluter Pays Principle must be applied to demand environmental compensation. The tribunal therefore disposed the original application by directing the private Respondents No. 6-8, jointly and severally to pay an amount of 1 lakh to the Haryana State Pollution Control Board and plant ten times the number of trees felled by them, and Respondents 2-4 [State of Haryana, Department of Town and Country Planning, Chandigarh and Department of Forests State of Haryana] to take appropriate action against unauthorized cutting of trees, breaking of land or any non forest activity in the forest including gair mumkin pahar, which is a deemed forest in view of the PLPA Notification and directions of the Supreme Court.

In view of the said directions, the application was disposed of.

M/s. HITSS Plastico Painting
v.
The Chairman, Tamil Nadu State Pollution Control Board
Appeal No. 99/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent
Decision: Allowed
Date: 18 March, 2016

JUDGMENT

This appeal was filed against an impugned order passed by the State Pollution Control Board under the Air and Water (Prevention and Control of Pollution) Acts for closure and disconnection of electricity to the appellant unit. The undisputed facts were that the appellant unit required consent from the Board and on the date of the order, the unit did not have consent to operate.

The case of the applicant was that impugned order referred to the show cause notice, while the impugned closure order referred to the non-obtaining of the consent from the Board whilst impugned order spoke about the removal of encroachment as per the Tribunal's directions, which was contradictory in nature and on that ground, the impugned order was liable to be set aside.

The Hon'ble Tribunal accepted the above contention and permitted the appellant to re-present the application for consent and set aside the impugned order passed by the Board. It also directed the appellant to not carry on any activity until the Board passed the order granting consent, after which the respondents were directed to restore the power supply to the appellant's unit.

Accordingly, the application was allowed.

M/s. Vasu Yarn Colours
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
Application No. 67/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Bleaching Unit, Dyeing, Non-Compliance
Application Status: Dismissed
Date:18 March, 2016

JUDGMENT

This application was filed by the owner of a bleaching and dyeing unit, against the State Pollution Control Board ('Board'), which after granting consent had restricted the production capacity to generate only 50% of the originally allowed KLD on the ground that the applicant had not complied with the environmental criteria.

However, in the inspection report filed by the District Environmental Engineer ('DEE'), the Board had recommended the issue of consent for 100% capacity to the applicant and since the application had not been considered so far, the applicant had given a representation itself to operate the unit with full capacity by issuance of the Consent.

In view of the above submission, the Hon'ble Tribunal directed the Board to take note of the recommendation made by the DEE and pass appropriate orders on merits, within a period of 3 weeks from the date of receipt of a copy of this order. Accordingly, the application was disposed of.

M/s. Wintrack Blue Metals
v.
The Appellate Authority, Tamil Nadu Pollution Control Board & Ors
Appeal No. 72 to 75 of 2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent
Decision: Dismissed
Date: 18 March, 2016

JUDGMENT

This applicant was filed by owners of stone crushing units who had applied for consent before the Pollution Control Board ('Board'). It was rejected on the ground that the units did not conform to the criteria prescribed in B.P. No.4.

The appellant's case was that the Board had not prescribed the criteria in a scientific manner, with application of mind and that the Board itself was not empowered to pass such orders as per Section 17 of the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act'); the Board could only recommend to the State government the passing of such orders.

The Board, on the other hand, submitted that Section 17 of the Air Act gave it adequate powers to formulate any method to cite criteria and that consent of the State Govt. was not required. As for the validity of the B.P.No.4, the High Court of Madras had already settled the issue and had upheld the validity of the same. It also denied any issue relating to environment in the appeal.

The Tribunal was of the view that B.P.No.4, apart from having being upheld by the Division Bench of the Madras High Court, had been passed by the Board after due application of mind and consideration of all relevant issues. It stated that S.17 (1) (g) of the Air Act enables the State Board to prescribe the standard of emission of air pollutants and to consult for the same with the Central Board; it does not take away the powers of the State Board.

Therefore, the Tribunal did not accept the contention of the applicants. Accordingly, the appeal failed and was dismissed.

Kishore Deepak Kodwani
Vs.
Chief Secretary, Government of Madhya Pradesh & Ors

Original Application No. 24/2016 (CZ)

Coram: Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. Satyawan Singh Garbyal
Keywords: Water Body, Wetland, Construction project
Decision: Dismissed
Date: 18 March, 2016

JUDGMENT

The application was filed aggrieved by the actions of the Municipality which allotted portion of a water body named Pipliyahana Lake for construction of the District and Sessions Court, Indore which was contrary to the communication of the Housing and Environment Ministry which stated that the land being a water body and a green belt could not be used for the court construction.

The Tribunal to determine as to whether the lands in question were a water body called upon the reports of the District Collector, Indore which revealed that the lands were in the name of the State Government and were not classified as a tank or water body. The Tribunal constituted a committee to ascertain the factual status of the land and as to whether the land in question was a wetland to be protected in terms of the MoEF directions and whether the construction would lead to any adverse impact on the quality of the water of the talab. The report revealed that the proposed construction was in a different khasra where due to illegal mining/removal of soil, a reservoir structure got created whereas the lake was found to be adjacent to it which was dry and said to be filled only in the rainy season. The Committee further stated that the Pipalyahana reservoir was not covered under the category of wetlands. Hence, the Wetland (Management and Conservation) Rules, 2010 were not applicable to it. It was further stated that the since the construction was beyond 20,000 sq mts, the same would require EC from SEIAA in which case concerns regarding quality of water would be taken care of. However, the applicant opposed the report and argued that the lands in questions were within Full Tank level (FTL) which got flooded in the rainy season.

The Tribunal observed that the contention of the applicant was in conflict with the revenue records filed before the court. It was further noted that though the applicant was aware about the conversion of land in the year 2000 and subsequently in 2012 where notification was issued by the Town and Country Planning Department permitting the conversion of land in question, he did not take efforts to challenge the said conversion or explain the delay. The Tribunal noted that the application was barred by limitation as it was filed beyond the prescribed period provided under section 14. The Tribunal also noted that the project was granted clearance by SEIAA on 05.03.2016 which while

stipulating EC conditions also addressed about the preservation of the lake. Thus, considering the same, the Tribunal denied to interfere with the construction of the project and dismissed the application for the said reasons.

S. Baskar

v.

The Chairman, Tamil Nadu State Pollution Control Board & Ors

Application No.43/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Ground water, Compliance
Decision: Dismissed
Date:19 March, 2016

JUDGMENT

The applicant, who was a resident of a village in Thiruvallur District, had filed this applicant seeking a direction against the project proponent to comply with the directions given by the Pollution Control Board within the stipulated time. According to the applicant, the M/s. Hi Tech Carbon ('5th respondent') had violated the provisions of the Tamil Nadu Ground Water Development and Management Act and had not complied with the various requirements by providing environmental measures as directed by the Tamil Nadu State Pollution Control Board ('Board').

The 5th respondent denied the same and gave full directions as to how the directions had been complied with and the same came to be informed to the Board, which was satisfied by such compliance and renewed the consent order. He stated that the filing of this application was an abuse of the process of law and was barred by the principle of Res-Judicata.

However, the incessant contentions raised by the applicant against the 5th respondent lead to the issue of whether the 5th respondent had complied with all the requirements as recommended by the Board or not. In the first instance, the Tribunal found that the allegations of pollution made by the applicants were devoid of merits but directed the Board to make periodic inspection and monitor the implementation of preventive and precautionary measures in respect of air and water pollution to ensure a pollution free environment in and around the unit. This was based on an order passed on an earlier occasion in response to an application filed by 10 persons of the village, including the present applicant and this was binding on him too.

Based on the opinion given by the Board with regard to compliance with the directions, the Tribunal was of the view that there was absolutely nothing on merit in this case to enable the Tribunal to interfere in this matter, considering that internal checks and controls were in place for provocative pollution control with a focus on continuous development, in the disputed unit.

Therefore, the application was dismissed with directions to the Board to continue monitoring the unit and take appropriate measures against negligence.

S. Athivel

v.

The Member Secretary, Tamil Nadu State Coastal Zone Management Authority & Ors

Application No.153/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Boat-Building Shed, Coastal Regulation Zone
Decision: Disposed
Date:19 March, 2016

JUDGMENT

The applicant had brought this application against the denial of permission to build a boat building shed in the Kanyakumari district. The District Coastal Zone Management Authority ('the 2nd respondent') had recommended the same to the Tamil Nadu State Coastal Zone Management Authority ('1st respondent'). It was found that the site in question fell in the CRZ-II area, however no permission was granted as per the CRZ notification 2011 by the 1st respondent, to whom the application had been forwarded by the 2nd respondent. According to the applicant, the 1st respondent was seeking certain particulars which were not required.

According to the applicant, the 1st respondent had directed him to produce details in Form-I with detailed project report and a topo-sketch with construction drawings, which had already been produced, along with the HTL demarcation map, which was also available with the 2nd respondent. As for the Environment Impact Assessment ('EIA') Risk Assessment, Disaster Management and EMP reports, they were not required as it was a small project and is only applicable when EIA is attracted, which was not so in this case.

The Hon'ble Tribunal accepted the above contentions and directed the 1st respondent to consider the plans and pass appropriate orders within a period of 8 weeks from the date of receipt of copy of this order.

With the above direction, the application was disposed of.

Sabu N.J.
v.
Union of India & Ors
Appeal No. 102/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Environment Clearance, Eco-sensitive Zone
Decision: Dismissed
Date:21 March, 2016

JUDGMENT

This is application was filed against the Environmental Clearance granted by the Union of India (1st respondent) and Kerala State Environment Impact Assessment Authority ('SEIAA') in favour of Sreedharan Rajakkad ('7th respondent') for the purpose of putting up a petrol bunk in the land with the supply from Bharat Petroleum Corporation, ('6th respondent') in the Idukki District in Kerala. It was submitted that nothing about the project was stated in the Environment Clearance ('EC') granted to the 7th respondent and only related to the removal of earth, subject to certain conditions.

According to the appellant, the land was situated in an eco-sensitive zone and was assigned as per the provisions of the Kerala Land Assignment (Regularization of Occupation of Forest Land Prior to 1.1.1977) Special Rules, 1993, which meant that it could only be used for cultivation purposes. Therefore, the present purpose of putting up a petrol bunk was not permissible as per statutory rules. It was also submitted that even though the EC was not a mandatory requirement, given the extent of land to be used (58.39 cents) and the purpose of utility, the SEIAA should have conducted a physical verification of the site to come to a conclusion regarding the granting of permission to remove the earth up to 2 meters depth.

The Tribunal was of the view that the appeal was liable to be dismissed as there was no substantial question of the environment involved, and the challenge to the validity of the assignment made was beyond the jurisdiction of the Tribunal. It was, however, held that the condition on which the SEIAA had granted the EC, of removal of earth not going beyond 2 meters, should be scrupulously followed by the 7th respondent. It also directed the District Collector of the said area to nominate one office to supervise the execution of the said condition, of the EC.

Accordingly, the application was dismissed.

R. Dhanapal

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application No.91/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent
Decision: Dismissed
Date:21March, 2016

JUDGMENT

This application was filed seeking a permanent injunction against factory owners of M/s. Sri Sellandiamman Traders for running their manufacturing unit without obtaining proper permission for the same from respondents 1 to 5. The respondents submitted that all permissions had been obtained and the consent to operate and establish the mill was valid up to March 2016.

In view of the same, the Tribunal stated that the prayer made in the application could not be granted but it was always open to the applicant to work out his remedy in the manner known to law against the order of consent to operate.

Accordingly, the application was dismissed.

Rajiv Savara
v.
Darrameks Hotels & Developers Pvt. Ltd & Ors
Original Application No. 315 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Illegal construction, Environmental Compensation, Restoration, Ganga
Decision: Allowed
Date: 21 March 2016

JUDGMENT

The applicant was a CA who frequented the concerned areas in Uttarakhand, and found illegal construction/commercial activities on both private and government land, the river banks, plains and bed of the Holy River Ganga, posing a serious threat to it and the environment/wildlife. The applicant contended that the construction activities using heavy machinery was affecting the free flow of the river blocking the streams, causing flash floods and water pollution. The applicant had previously approached authorities seeking information regarding whether the Environmental/Forest, and other clearances had been obtained by the respondent developers. However, no information was provided. It was the case of the applicant that the Environment (Protection) Act, 1986 obliges the Government to take all steps to improve the quality of the environment, and that the activities in question were infringing the Water (Prevention and Control of Pollution) Act, 1974. Therefore, the applicant prayed for removal of illegal construction and restoration of the area and to also assess the loss caused to the river. The applicant also relied on the order dated 26th August, 2013 passed in Legal Aid Committee, National Green Tribunal Bar Association vs UOI & Ors, OA No. 151 of 2013, wherein the Tribunal had prohibited new constructions in the ESZ and on the river bed and banks of Ganga and its tributaries.

It was the case of the respondent that permission for the land to be changed to non-agricultural land had already been approved, and that the hotel/spa being constructed had all the necessary permissions so as not to harm the environment in the process. The respondent argued that he had obtained valid consent for the said construction and has also undertaken EIA and geotechnical soil investigation to assure that no damage is done to the ecology. The questions before the tribunal for determination included: whether the project falls within an eco-sensitive zone, whether it is covered by EIA Notification, 2006, whether it falls under any forest category, and whether the activity is purely commercial/permissible on the banks of the river Ganga.

With respect to the first question, the Central Govt. had issued certain regulations in respect to the Eco Sensitive Zone ["ESZ"] of the River Bhagirathi, as per which the entire watershed of 100km stretch of the river Bhagirathi from Gaumukh to Uttarkashi was to

be treated as an ESZ, and the tribunal found the impugned project/villages in question to be outside this zone as per the geo-referenced location. Thus, it noted that since the area in question was outside the notified ESZ, the restrictions/regulations of ESZ could not be applied. With respect to the second question, the MoEF had issued an EIA Notification in September 2006, as per which Building and Construction Projects of ≥20,000 m^2 built up area required prior Environmental Clearance from the State Level Environmental Impact Assessment Authority ["SEIAA"], and the tribunal found the project in question to be excluded from the ambit of the notification as its area was much smaller than that specified in the act. However, at the same time the tribunal held that the project was commercial in nature and therefore was required to obtain prior "Consent to Establish and Operate" from the concerned Pollution Control Board under various environmental related acts and rules, which would be needed only at the time of commissioning. With regard to the third question, the tribunal concluded from the information provided by the State Forest Department of Uttarakhand that the project area was originally private agricultural land, and therefore did not fall under any forest category.

Finally, the tribunal referred to Section 20 of the National Green Tribunal Act when discussing the principle of Sustainable Development, to decide the last question beforehand. The respondent had submitted that the impugned project was an ecotourism venture, however the court rejected this argument, finding it to be a purely commercial project. The Respondent was found to be incompliant with the conditions set forth in the permissions obtained by it, and also the decision in Dinesh Bhardwaj v. State of Uttarakhand, W.P (PIL) No. 103 of 2011, as per which all construction made on the bank of the river Ganges subsequent to 2000 was to be removed. Further, the tribunal found the issuing authorities liable for failing to stop the project proponent from committing the violations, despite, in all probability being aware of the aforementioned decision.

The tribunal disposed of the application by directing the formation of a Committee to inspect the project site and give its recommendations in respect of the impugned project beyond 100m line vis-à-vis impact on the adjacent river. The Tribunal prohibited further construction of the impugned project till final directions of the Tribunal based on the Committee report. Further, the project proponent was directed to pay environmental compensation of Rs 20 lakhs for violating the conditions of the Consent and for disturbing the catchment of river Ganga. The said amount was directed to be utilised for restoration of the area.

Social Action for Forest & Environment

v.

Union of India & Ors

Original Application No. 80 of 2014 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Construction on river banks, Elephant Corridor, Forest
Decision: Disposed
Date: 21 March 2016

JUDGMENT

There were two questions for consideration of the tribunal; first, whether the construction of a wall on the banks of Song river in Rajaji National Park, Uttarakhand violated Section 2 of the Forest (Conservation) Act, 1980 ["Act"] and secondly, whether it would obstruct the movement of elephants and tigers passing through the Motichur elephant corridor. It was the case of the respondent that the construction was necessary to protect the villagers residing in the vicinity and the alleged construction was undertaken as an ancillary measure of conservation, development and management of forest and wildlife in accordance with the approved management plan. It was further submitted that ramps have been provided to that wall to facilitate the movement of elephants. On the other hand, the applicant argued that elephants movement would be obstructed as the alternative ramps of passage were not effective.

The tribunal came to the conclusion that the ramps could cater to the needs of the animals, after considering the submissions made by the Director, Wildlife Institute of India with respect to the ability of elephants to negotiate hill slopes of inclination similar to the ramps. With respect to the challenge under Section 2, the tribunal held that the construction of the wall is ancillary to conservation and management of forests, and therefore does not qualify as 'non forest activity' prevented under the said section. The tribunal thereby disposed of the application with the condition that the State first establish anti-poaching camps, install screens on both sides of the road, a road bridge over the Song River before 31st May, 2016 and on completion of the said work the construction of the wall and stabilization of the river bank must be done simultaneously. The Tribunal further directed the authorities to ensure protection of the vegetation cover on the banks of the river Song and Ganges.

Readiness for Empowerment
v.
Union of India & Ors
Application No. 32 & 49 of 2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Minor Minerals, Environment Clearance
Decision: Disposed
Date: 29 March, 2016

JUDGMENT

In the original application, the order of the Department of Mines and Geology, Government of Telangana, was under challenge as under the impugned order, the Director of the Department had stated that it had proposed to consider the grant of lease for minor minerals as per an undertaking in the form of a notarized affidavit from the lease holders to produce an acknowledgement of having applied for an Environment Clearance ('EC') and Consent for Establishment before commencement of quarry operations, according to the prevailing rules. This was to comply with the orders of the National Green Tribunal ('NGT') till comprehensive Minor Mineral Rules were framed and notified by the State Government.

Accordingly, the Supreme Court, in the case of *Deepak Kumar v. State of Haryana* had given 3-month time period to those who had already applied for the grant of clearance and given 3 more months to apply for the EC, to those who had not yet applied for one and directed that such applications should be disposed of expeditiously, not later than 6 months from the pronouncement of the judgment. Therefore, in the present case, the time period for the applicants had already come to an end which further confirmed that a mere application to obtain EC with an undertaking in a notarized affidavit would not sufficient to proceed with the mining operation. Keeping this in mind, it was not possible to accept the contents of the order passed by the Director of the Department of Mine and Geology.

It was contended by the respondent that the meaning of the term "mine" in the Mines Act, 1952 and stated that Section 3 of the said Act excluded its application under certain conditions, which were being met by the respondents. However, the Tribunal denied this on the basis that the object of the Mines Act, 1957 was different from that of the Mines and Mineral Act, 1957 and that the former was only a legislation to protect labor and safety of mines whilst the latter dealt with the regulation of mines and minerals. Subsequently, the Tribunal also brought the parties attention to the statutory notification issued by the Ministry of Environment, Forests and Climate Change ('MoEF & CC') wherein it was stated that where the mining lease in respect of non-coal mine was up to 5 hectares, it would fall under the B2 category. Further, the Central Government had constituted the District Level Environmental Impact Assessment Authority ('DEIAA') for the grant of EC for category B2 projects for mining of minor minerals.

Therefore, the Tribunal directed the State Government to take necessary action to enable the statutory authority to function in all districts and further directed the SEIAA to transmit pending proposals to the concerned DEIAA. It further stated that if the South Central Railways' application for EC were filed before the SEIAA or fresh applications were made to the DEIAA, the authority should consider the application on merits and pass appropriate orders within a period of 4 weeks.

With the above directions, the application was disposed of.

Mr. E. Mohan
v.
Secretary to Government & Ors
Application No. 115/2015
And
Mr. R.V. Baktavachalam
v.
Municipal Administration and Water Supply (TP.2) Department & Ors.
Application No. 116/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Sewage, Effluent Discharge, Consent
Decision: Disposed
Date: 29 March, 2016

JUDGMENT

These applications had been filed to forbear the respondents from letting out sewerage water into the Cooum river in the Tiruvallur District and instead discharge the same into old lakes and quarry pits. It was stated by the applicants that they did not object to the system in its entirety, but were concerned with the discharge of effluents into the river.

The respondents stated that the Municipality did not have an organized sewerage system and therefore an Under Ground Sewerage Scheme ('UGSS') system had been formulated to benefit the population and that the proposed treated effluent to be discharged into the river was as per Tamil Nadu Pollution Control Board ('TNPCB') standards, the quality of which, would be periodically monitored. The respondents also stated that this project had been initiated to improve the sanitary conditions of the Town Panchayat and had been designed to treat the discharge in such a way that it does not pollute the river. It was also averred that the project had almost been completed, and hence cessation of the same was unfeasible.

The Hon'ble Tribunal observed that the site had been chosen by the respondents after conducting all necessary technical feasibility studies and after approval of the TNPCB, and hence it was also observed that instead of polluting the river, the project would, on the contrary help maintain the quality of the river water whose quality had been declining steadily. It was held that allowing sewage to be discharged into lakes and open quarry pits as opposed to the river would be environmentally unsustainable. Therefore, based on inspection reports, the Tribunal dismissed the applications, with directions to the respondents for duly ensuring effective collection and pumping of sewage and functioning of Sewage Treatment Plants ('STP'), and to obtain necessary permission from the Public Works Department ('PWD') for discharge of effluents into the river, and seek 'consent to establish' from TNPCB on that basis, ensure a system of periodic collection and analysis of water, test samples at regular intervals and provide the results of the same

to the residents and to use treated sewage water for industrial purposes, watering of plants, raising green belts etc. The Tribunal further gave liberty to the applicant to approach the competent authority in case any leakage or damage to the underground pipeline was observed or standards not followed while treating sewage in the STP's.

Accordingly, the application was disposed of with no order as to costs.

The Mysore Paper Mills
v.
Union of India & Ors
Appeal No. 94/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Pollution
Decision: Allowed
Date: 29 March, 2016

JUDGMENT

This appeal had been filed by a Public Sector Undertaking, carrying out activities of production of newsprint, printing paper and sugar cane crushing, owned by the Government of Karnataka, stating that it had taken all the environmental pollution control measures through expertise.

This appeal was filed following an inspection of the unit by the State Pollution Control Board ('Board'), during which observations regarding improper implementation of pollution and emission discharge standards were made, and thereafter, a show cause notice was issued to the unit. In the meantime, the consent given by the Board had expired and was later renewed up to June 2016.

In the impugned notice issued to the appellant unit, various directions were given, one of them being the immediate closure of the unit. In the inspection report prepared by the Board, compliance to most of the directions was observed except a few which required certain period of time for completion of the process and further directions to complete the remaining work within a month were issued to the unit.

On receiving the inspection report from the Central Pollution Control Board ('CPCB'), after the due completion of the work, the Hon'ble Tribunal was satisfied of the substantial compliance with the requirement and directed the CPCB to inspect the unit once again and pass orders. It also directed the Board to pass order in granting renewal of consent to the appellant unit in accordance with Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and the CPCB to pass orders revoking closure on carrying out inspection and satisfying the compliance of the conditions and any other orders to ensure proper functioning of the unit.

With the above directions, the appeal was disposed.

Wireless Colony Co-operative Housing Society
Vs.
Government of Maharashtra & Ors.

M.A. No. 51/2016
In
Appeal No. 96/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, Construction, Limitation
Decision: Allowed
Date: 30th March 2016

JUDGMENT

This appeal was filed to challenge revalidation of the EC granted in favor of the Respondent No. 2 (project proponent) by the MoEF with regard to the proposed construction of I.T park and commercial project at Survey No.169/I, Sector I and II, Aundh, Pune. After scrutiny the appeal was listed before the Tribunal on 04/02/2016. Thereafter the appeal was considered on 05/02/2016 wherein the Tribunal passed an interim order by which the Respondent No. 2 was directed to not proceed with further construction. But Respondent No. 2 was given liberty to carry out interior decoration and civil work within the structure already completed. Under this M.A. 51 of 2016, Respondent No. 2 questioned the maintainability of the original appeal and the interim order passed on 05/02/2016. The Respondent contended that since the Tribunal had not considered and condoned the delay in filing of the original appeal, it had no jurisdiction to grant any interim relief.

In response to this M.A., the appellant submitted that Section 18 of the NGT Act read with Rule 8 of the NGT (Practices and Procedures) Rules, 2011 were applicable to the appeal. Therefore the appellant submitted that it need not submit a separate application for condonation of delay.

Considering the arguments advanced, the Tribunal noted that the scheme of Section 16 of the NGT Act envisaged that the Tribunal may condone the delay in filing of appeal if it was satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period. The Tribunal noted that words 'allow it to be filed' in Section 16 of the NGT Act referred to the very initial stage and not after the appeal was accepted. Further, the Tribunal also noted that the appellant had to show sufficient cause by way of which he was prevented from filing the appeal within the prescribed time. Therefore, the Tribunal opined that in order to consider the interim relief the appeal should be legally registered before it. In these circumstances, the Tribunal recalled its order dated 05/02/2016 and posted the appeal for hearing on condonation of delay in M.A. No. 262 of 2015.

Accordingly, the M.A. No. 51 of 2016 was disposed of with no order as to costs.

Mr. Senthil
v.
The District Collector

Application No. 201/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Flooding, Reserved Forest
Decision: Dismissed
Date: 1 April, 2016

JUDGMENT

This application was filed seeking a mandatory injunction against the respondent for construction of the bridge on Lake Jarathal in Erode District. It was alleged by the applicant that bridge construction activities had affected the free flow of water, causing floods and inundating the nearby village. The applicant submitted that even though the respondents had allegedly put up the bridge in the name of development, it was not connecting the nearby villages and on the contrary, only facilitated movement of vehicles into the forest, which would inevitably result in damage to the natural environment. The applicant also filed a Miscellaneous Application with a prayer of appointing an Advocate Commissioner to inspect the disputed area in order to assist the Tribunal in finding out the usefulness of the bridge.

The respondent contended that the bridge had been built since there were only two paths for villagers to move about in the village, one of which belonged to the applicant. However, both of them had been blocked, and hence it had become necessary to construct the bridge. It was submitted that the bridge was designed to discharge 685 cusecs of water which did not create an obstruction to the free flow of water or endangering the crops in the villages; neither was the Reserved Forest affected by the construction of the bridge nor was the natural environment being affected in anyway. Rather, the bridge was constructed as a means to provide basic facilities to the villagers and help safeguard the ecology. The applicant stated that only 4-5 families lived in that area and the bridge only enabled them to freely go into the forest and damage the natural environment therein.

The Hon'ble Tribunal observed on perusal of the letter from the Forest Ranger, which clarified that there would be no ingress by animals into the village, noted that the construction of the bridge was by public participation and that people in the area had contributed Rs.5,00,000 that was spent for the purpose of the construction. The Tribunal stated that there was no need for removal of the bridge, in the circumstances that the construction was based on public participation scheme and there was no obstruction of the free flow of water.

Accordingly, both the Original and Miscellaneous applications were dismissed.

MGR University Research & Educational Institute & Ors
v.
P. Edwin Wilson & Ors

R.A. No. 02/2014
In
Application No. 164/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Review, Polluters Pays Principle
Decision: Dismissed
Date:1 April, 2016

JUDGMENT

This review application was filed by respondents 20-24 in the main application 164 of 2014 against a prior interim order passed by the Tribunal on 16.03.2016, directing them to pay Rs.40, 00,000 to the Chennai Rivers Restoration Trust in lieu of the polluters pay principle within 2 weeks from the order. The application was submitted for circulation of the Members, under Rule 22(3) of the NGT (Practice and Procedure) Rules, 2011, for which the Tribunal directed that since the interim orders had been passed based on the report of the State Pollution Control Board and no new facts were available, the impugned order could not be reviewed.

Accordingly, the application was dismissed.

Ajay Kumar Negi & Anr

v.

Union of India & Ors

Miscellaneous Application No. 701,1052,1084 of 2015

In

Original Application No. 183/2013 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Bikram Singh Sajwan, Hon'ble Mr. Justice Ranjan Chatterjee
Keywords: Hydroelectric Project, Compensation, Implementation
Decision: Partly Allowed
Date: 4th April, 2016

JUDGMENT

The applicant had filed a writ petition before the Himachal Pradesh High Court objecting to the Tidong Hydroelectric Project ["THP"] in Kinnaur, alleging that it violated the conditions of environmental clearance ["EC"] and forest clearance ["FC"], and caused substantial damage to the forest wealth specifically the Chilgoza trees. It further sought for a comprehensive report with respect to the damage done to the forest and trees, cancellation of the Memorandum of Understanding between the State and project proponent, M/S Nuziveedu Seeds Ltd and also the EC granted by MoEFCC, inquiry against the officials for violating the provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 and execution of the project in violation of the laws. The applicant also sought compensation for the loss of livelihood on the basis of polluter pay principle.

The said writ petition was transferred to the Tribunal in the year 2013. In the judgment passed on 07.07.2015 the tribunal though declined quashing of the Memorandum of Understanding and Environmental Clearance, but issued directions towards environmental protection, restoration of the ecology and collection of data before any further activity could take place. An expert committee was constituted, to visit the project site, prepare a report, and comment on the adequacy of maintaining 15% flow of the river. The committee was also required to ensure that the conditions of the Environment and Forest Clearance and R&R Policy had been complied with by the Project Proponent, confirm the number of trees that have been felled/damaged by the project activity, and identify all other damages done to the environment. In addition to the same, the Project Proponent was required to deposit a sum of Rs. 5 crores with the State Forest Department, as an initial deposit for environment conservation. The Tribunal had specified that the Project Proponent was also expected to make payments for destruction of trees (particularly the Chilgoza Trees), and the money therefrom was to be used for

restoration purposes and to compensate the loss of income suffered by the local people. With the said directions, the project work was suspended for a period of 45 days till the inspection by the Expert Committee was to be conducted.

The present applications in this case were moved by the Project Proponent and the Chief Conservator of Forest, Himachal Pradesh, pleading for deletion of the conditions with respect to the payment of sum of Rs. 5 crores/additional sums and for placing on record the Report of the Expert Committee ["Report"] set up by the tribunal.

The Project Proponent objected to the aforementioned conditions on the grounds that if only the balance work was allowed to be completed, there is no possibility of further damage to the environment, as substantial work had been finished. The Project Proponent argued against the fine of Rs. 5 crore stating that as opposed to the estimated 4815 trees, only 1897 were actually cut, and no further damage was possible therefore the deposits already made to the concerned departments should suffice with respect to compensation as well. The Tribunal decided to further examine the Report, which was not disputed by either party. Placing reliance upon the Expert committee report, the Tribunal took note of the fact that the project proponent was implementing the prescribed conditions in cooperation with the authorities and the Pollution Control Board, Himachal Pradesh had not noticed any gross irregularities. The Tribunal noted that the committee did not find any irreversible heavy damage caused by the project, in general/to the lives of the people, as there hadn't been any commercial/population displacement rendering farmers landless. Additionally, the Project Proponent had already submitted records to the effect that land compensation had been provided/rehabilitation plans had been prepared and approved by the Revenue Department of the Govt. of Himachal Pradesh, and were only awaiting preparation of final notification/implementation. Based on the findings of the Committee recorded in the Report, the Tribunal held that the Project Proponent must be allowed to carry out the said works, but did not take a decision on relieving the Project Proponent with the condition as regards payment of compensation.

After hearing the applications, the Tribunal permitted the project proponent to carry out the construction work as long as no further trees were felled, muck was disposed of in accordance with conditions of the Environmental Clearance, construction material and muck was carried in covered vehicles, natural drainage was not disrupted, and monthly reports of muck generated, utilized and stored was sent to the Himachal Pradesh Pollution Control Board. The Project Proponent was also directed to discharge the obligations it had committed to in the public hearing, and directed an Organization of National Repute in consultation with the National Biodiversity Authority to prepare a Biodiversity Conservation and Management Plan within 3 months, and initiate steps for its execution. Further, the Project Proponent had to hand over to the Forest Department all muck dumping sites after they served their utility, and pursue the matter of identification of sites for construction of fish hatcheries with the Fisheries Department of the State. Additionally, the Project Proponent was directed to constitute a Multi-

Disciplinary Committee comprising of ecologists, conservationists, administrators etc. in consultation with the Ministry of Environment & Forests to oversee implementation of the safeguard measures within 3 months, upload 6 monthly compliance reports, and comply with the conditions laid down in the forest and environmental clearance. The Tribunal directed the Forest Department of the State to expedite compensatory afforestation, implementation of Catchment Area Treatment plan, and execution of reclamation plan for muck dumping sites, as well as show appreciable progress in the said execution. Finally, the Fisheries Department was directed to cooperate with the Project Proponent for the construction of Fish Hatchery, and the Ministry of Environment, Forests, and Climate Change, Govt. of India was directed to expeditiously constitute the Multi-Disciplinary Committee to oversee the implementation of the suggested safeguards within 3 months.

Accordingly, the Application was disposed of.

Sri Prakash Chander Kapur
v.
Union of India & Ors
Application No. 13/2012 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Municipal Solid Waste
Decision: Dismissed
Date:5 April, 2016

JUDGMENT

In the present application, the respondent (Pollution Control Committee) had filed a Status Report relating to the Karuvadikuppam Municipal Solid Waste dumping site, stating that the site for the dumping of the waste consisted of 12 acre land, located away from habitation and that the dumping at the said site had stopped back in 2012. He also stated that the waste had decomposed and no waste was visible; it was not covered in herbs and shrubs. This was also confirmed by the inspection carried out by the Pollution Control Committee.

Although the applicant submitted that the application could be disposed of, he stated that it was not fair to say that the site had been completely reclaimed considering that there was plastic and other inert materials like glass and ceramics still left at the site.

Accordingly, the application was dismissed with a direction to the Pollution Control Committee to remove plastic and other inter materials from the site within a period of 8 weeks from the date of the order. It also directed the State Government to take necessary steps for afforesting the site to completely reclaim the site.

Wireless Colony Co-operative Housing Society
Vs.
Government of Maharashtra & Ors.

M.A. No. 262/2015
In
Appeal No. 96/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Revalidation of Environmental Clearance, Construction, Limitation, Knowledge, Sufficient cause
Decision: Allowed
Date: 6th April 2016

JUDGMENT

This appeal was filed to challenge revalidation of the EC granted in favor of the Respondent No. 2 (Project Proponent) by the MoEF with regard to the proposed construction of I.T park and commercial project at Survey No.169/I, Sector I and II, Aundh, Pune.

The facts of the case were that initially the proposed project was granted EC by the MoEF on 07/12/2007 which was valid for a period of five years. Since the project proponent failed to complete the project within time, it applied for revalidation of EC to SEIAA. On consideration, SEIAA granted extension of the EC for further five years by its order dated 11/06/2014. This order of SEIAA was challenged by the appellant before the Tribunal in Appeal No.28/2014 in which by order dated 07/08/2015 the Tribunal directed SEIAA to keep the order in abeyance and reconsider the application and pass a speaking order. By virtue of this direction, the application was reconsidered by SEIAA and after securing a report from Executive Engineer, Pune Municipal Corporation it passed second order on 24/09/2015 in which the Project proponent was granted extension of EC for further five years.

The appellant challenged the second order of SEIAA in the present appeal on the grounds that SEIAA had failed to comply with the directions of the Tribunal wherein it was directed to consider feasibility of the project, its impact on environment and conduct spot inspection. The appeal was beyond the prescribed period of thirty days and thus the appeal was accompanied by M.A. No. 262 of 2015 for condonation of delay.

The Project Proponent resisted the appeal and questioned its maintainability on the ground of limitation. In reply to the same, the appellant submitted that after the order of the Tribunal dated 07/08/2015 in Appeal No. 28/2014 they had no knowledge of the proceedings conducted before SEIAA. Further, the appellant submitted that they had applied for information under the provisions of RTI, however, SEIAA did not respond to

the same. On verification, the appellant came to know that SEIAA had granted extension of EC to the project proponent vide the impugned order and the same was downloaded from the website. Thus, the appellant contended that the appeal was not filed within the period of 30 days for want of knowledge and there was no malafide intention on their part. In reply, the project proponent submitted that the statements by the appellant were inconsistent and malafide. The respondent also placed reliance on the judgment of Supreme Court in the case of *Ajit Singh Thakkar Singh v State of Gujarat* in which law was laid that any amount of explanation showing sufficient cause beyond the period prescribed for appeal was of no avail. Thus, the project proponent sought dismissal of the present appeal.

Considering the above contentions, the Tribunal noted that in the case of *Ajit Singh* the Supreme Court was dealing with a criminal matter due to which it was not applicable in the present appeal. Further, the Tribunal after considering the judgment of the Hon'ble Principle Bench of NGT in M.A. No. 104 of 2012 arising out of Appeal No. 39 noted that there should be sufficient proof of knowledge of the impugned order to the appellants. The Tribunal noted that the project proponent had failed to publish the impugned EC on its website and in the local newspaper. The Tribunal opined that knowledge of the impugned order could not be imputed to the appellant as statutory requirements for publication in the website and local newspaper was not met.

The Tribunal also observed that provisions of Section 16 of the NGT Act envisaged that the Tribunal may allow an application to be filed beyond the period of limitation if the appellant proves sufficient cause which prevented the appellant from filing the appeal. The Tribunal noted that having no knowledge of the impugned order constitutes 'sufficient cause' and thus decided in favor of the appellant. The Tribunal also noted that the bar of limitation was not intended to destroy the valuable right of an honest litigant and that there was always a general presumption that ordinarily the litigant does not benefit by filing a late appeal. Finally, considering the Supreme Court rulings in the given issue, the Tribunal opined that in case of public litigations the Courts would lean in favor of condoning the delay as the right of several people would be affected.

Accordingly, the Tribunal allowed the M.A. 262 of 2015 with no order as to costs and ordered that Appeal No. 96 of 2015 would be heard on merits.

Mr. R. Chandriyan
v.
The Tamil Nadu Pollution Control Board & Ors
Application No. 167/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Mining, Environment Clearance
Decision: Dismissed
Date: 7 April, 2016

JUDGMENT

This application was filed challenging the conduct of the 8th respondent, namely, Kanchi Kamatchi Mines and Crushers, for not complying with the requisite conditions while granting the Environmental Clearance ('EC'). It also prayed for direction to cancel the said EC, clarifying that he was not challenging the EC but was only concerned about the alleged violations of the conditions.

The respondent submitted that such a claim arose out of a personal motive of the applicant and the State Environment Impact Assessment Authority ('SEIAA') further submitted that any challenge to the EC must be done by way of filing of an appeal which had to be dismissed on the point of limitation and if this present application were to be treated as one, it was not maintainable.

However, the Tribunal directed SEIAA to inspect the site and to decide whether there had been violations in complying with the conditions, in light of the contentions put forth by the applicant, and take appropriate actions if found to be so.

With the above direction, the application was disposed of.

NGT Bar Association
v.
The Chief Secretary & Ors
Application No. 41/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent to Establish, Toxic Sludge
Decision: Allowed
Date:7 April, 2016

JUDGMENT

The NGT Bar Association of Chennai had filed the present application praying for appointment of a Committee to inspect all the tanneries and Common Effluent Treatment Project ('CETP') to ensure that they had the required consent to establish and operate in Vellore District, to appoint an Expert Committee to inspect the CETP from the structural aspect and to direct an investigation by Additional Director General of Police, CB-CID ('CB-CID') on the false inspection reports made by the inspection officers. This application came to be filed consequent to a breach of the illegal secure landfill ('SLF') resulting in the death of 10 workers, who drowned in toxic sludge. According to the applicant, this incident took place due to insufficient maintenance of the CETP and false information had been given as if the CETP has been maintained properly, without visiting the place.

The Board replied stating that the CETP had been given consent to operate, which came to be renewed uptill 2015. Due to the accident in 2015, the Board had issued a direction for closure and disconnection of the electric power supply to the CETP and as per the directions of the Tribunal, the management of the CETP had remitted an amount of Rs.75 lakhs in the account of the State Government and Rs.25 lakhs from the said amount was disbursed to the kin of the victims. It is stated that the units requested restoration of electric supply to treat the stagnated effluent and post inspection, the Board issued suspension of the closure order and ordered restoration of electric power supply for 28 days, to treat the stagnated effluent and later for a period of 3 months. In the meantime, a Multi-Disciplinary Group ('MDG') was directed to look into the factors leading to the accident and to suggest measures to avoid such incidents. Subsequently, the recommendations given by the MDG were complied with, by the CETP and revocation orders were passed to suspend the earlier orders. The Tribunal directed the remaining Rs.50 lakhs in the account of the Principal Secretary to continue to lie there and be utilized for the benefit of maintenance of the CETP in exigency circumstances.

With the above directions, the application was disposed of, with no order as to costs.

K.K. Somasekharan Pillai
v.
State of Kerala & Ors
Application No. 312/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Rivulet, Weed Removal
Decision: Allowed
Date:7 April, 2016

JUDGMENT

This application had been filed seeking directions against the respondents for immediate action to clear and maintain a rivulet starting from Pampa to Manipala rivers leading to Panamkuzhi Reach-II, which was within the Municipality's limits, as the applicant was concerned about the weeds, bushes and shrubs growing therein. The Department of Irrigation affirmed that the main portions of the rivulet were covered with weeds, shrubs and vegetation, which had led to the accumulation of silt and earth, and that the said respondent had already spent Rs. 10-15 lakhs cleaning the same for 2 years, it was waiting for the sanctioning of a larger amount of Rs.1 crore for carrying out the remaining work of removal of weeds in 2016-17.

In view of the statement made by the Department of Irrigation, the Hon'ble Tribunal directed it to complete the removal of weeds and water plants within the stipulated period of 2016-17 and also directed the Thiruvalla Municipality to take necessary steps under the statute, by imparting civic sense among people to avoid throwing of waste into the rivulet.

Accordingly, the application was disposed of.

Alcon Real Estates Pvt. Ltd.
Vs.
The Goa Coastal Zone Management Authority & Ors.

Appeal No. 31/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Construction, Coastal Regulation Zone
Decision: Dismissed
Date: 7th April 2016

JUDGMENT

This appeal was filed contesting the directions passed under section 5 of the Environment (Protection) Act, 1986 by Goa Coastal Zone Management Authority ["GCZMA"]. The appellant submitted that there was some civil property dispute between the appellant and 2nd respondent which was pending before the civil court and the 2nd respondent had filed a complaint with the CRZ authorities with ulterior motives against the construction activities carried out by the appellant. It was further contented by the appellant that the construction of the property in question was approved by the Public Development Authority in March 1984, much before the CRZ Notification 1991 came into force. Subsequently, even the Ecological Development Council of Goa also approved the said plan and the construction commenced only after the appellant obtained all the necessary approvals. According to the appellant, certain villas could not be constructed due to the respondent's opposition. The impugned order by the GCZMA was challenged by the appellant on the ground that the constriction activity of the remaining villas was ongoing and for the same reliance was placed upon the judgment of the Apex Court in Writ Petition No. 329/2008.

In reply to the Appeal, the GCZMA stated that the permission obtained by the appellant had expired in 1991 when the CRZ Notification came into force. Thereafter, the appellant had failed to produce any re-validation/extensions of such permissions. Considering the heavy reliance, the Tribunal carefully examined the above mentioned judgment of the Apex Court and found that the Central Government had issued another amendment to Coastal Regulation Zone Notification, 1991 in August 1994 in which it relaxed the no development zone from 50m to 100m. In view of the said relaxation, the petitioners sought permission for additional construction between 50m to 100m and this was granted to them. This amendment was later held to be bad in law by the Apex Court. However, the Court included a caveat wherein the completed or on-going construction projects which were being undertaken pursuant to the said amendment would not be affected by the judgment making the amendment redundant. In the present matter, it was nobody's case that the remaining construction which was to be undertaken by the appellant was pursuant to amendment in 1994 and was carried out with necessary

permissions under the CRZ Notification. Therefore, the Tribunal felt that the findings of the Apex Court in the above judgment were not applicable in the present case. Further, the Tribunal noted that though the Enquiry Committee had taken a view in 2014 that the construction of the remaining villas are legal and valid but it is GCZMA which is to take a decision as it was the statutory authority. In its decision making process, GCZMA had exercised its power and authority by giving due opportunity to the appellant. The saving clause as provided under section 8 (1) of the CRZ Notification, 1991 protects the structures that existed on 19/02/1991, which makes it futile in the present case as the structures were yet to be constructed even on the date of judgment.

Accordingly, the Tribunal dismissed the appeal without any cost.

Goa Foundation
Vs.
Goa State Infrastructure Development Corporation & Ors.

Application No. 85/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Bridge Construction, National Highway, Environmental Clearance ('EC'), CRZ Clearance
Decision: Partly allowed
Date: 7th April 2016

JUDGMENT

The application was filed seeking compliance of Environmental Impact Assessment Notification, 2006 ('EIA Notification') and Coastal Regulation Zone Notification 2011 ('CRZ Notification') with regard to the construction of the 3rd bridge ('the bridge') across River Mandovi in Goa. It was the case of the Applicant that the bridge was being constructed without necessary Environment and CRZ Clearances. It was submitted by the Applicant that they were not against the construction of the bridge nor they were willing to stop or demolish the construction of the bridge and their only prayer was that the environment rules and regulations were adhered to and the project was implemented in view of doctrine of public trust and precautionary principle. It was also contended by the Applicant that the Goa Coastal Zone Management Authority ('GCZMA') had issued NOC without the assessment of the impact of the proposed construction on the banks and in riverine area and without considering the cumulative impact of the existing bridges in the area.

In reply to the Application, the Goa State Infrastructure Development Corporation (GSIDC), Respondent No. 1 submitted that the work order for the construction of bridge was issued only after following the necessary procedure. Further the Respondent submitted that the bridge was not an isolated structure and was part of the National Highway No. 17 which was proposed to reduce traffic congestion. The Respondent also contended that the application was barred by limitation as the construction of the bridge started in July 2014 and the application was filed in August 2015.

The Tribunal after considering the arguments framed four issues for adjudication. First, whether the Application was barred by limitation. Second, whether the construction of bridge requires EC under EIA Notification 2006 and/or under CRZ Notification 2011. Third, whether necessary procedure was followed by GCZMA while granting NOC and whether necessary safeguards were prescribed to ameliorate the potential environmental degradation. Fourth, whether certain directions were required to be issued by the Tribunal to adjudicate on the above issues.

The Tribunal noted that in the present application, the Applicant had not challenged the construction of the bridge but the challenge was only on the ground that no prior EC/CRZ was obtained for the construction. Therefore, the Tribunal opined that the period of limitation would start from the date of knowledge of such alleged violation, i.e the date when the applicant came to know that the project was being constructed without the necessary clearances, which had given rise to the 'dispute' as defined under Section 14 (3) of the National Green Tribunal Act and not from the date on which the construction of the project started. Accordingly, it was held that the application was within limitation.

Coming to the second issue as to whether the construction of bridge required CRZ/EC clearance, the Tribunal considered the provisions of the relevant Notifications. The Tribunal noted that the construction of bridge was a permissible activity under clause 3 of the CRZ but not under clause 8 as claimed by the respondent since the constructions referred therein were basically to cater the need of the local and traditional inhabitants living within the biosphere reserves which was not applicable to the present case. The Tribunal further observed that since the construction involved waterfront and foreshore facilities, it was hit by clause 4 necessitating clearance under the CRZ notification. With respect to the requirement of EC under entry 8 (a) of the EIA regulations, the Tribunal noted that the issue would have wider ramifications in view of large number of bridges and other similar structures constructed all over the country and considered the judgment passed by Principle Bench of NGT in Application No. 137/2014 *(Vikrant Tongad judgment)* wherein the Tribunal dealt with the applicability of the EC under EIA Notification for the bridge which was having more than 1,50,000 sqm built up area and held that such projects would be considered under entry 8(b) of the Schedule to the EIA Notification. It further acknowledged the judgment of the Supreme Court in Okhla Bird Sanctuary case which drew a distinction between a township and mere construction project. However, the Tribunal concluded that the bridge was not covered entry 8 of the schedule. The Tribunal also considered Entry 7 (f) since the project was a part of National Highway but since the same was an expansion/modification of NH less than 30 kilometers in length, the requirement of EC under the said entry was also negated. The Tribunal accepted the contention of the respondent that the entries under the schedule to the EIA Notification were distinct and separate and therefore when a project did not fall under the original category (Entry 7 (f)), it would not be open to try and incorporate or include the project under different category. Thus the Tribunal held that in the present matter the project would not require EC under the EIA Notification. However, it stated that since the project would require CRZ, the environmental concerns and impact on CRZ area will be duly looked into.

Coming to the third issue, the Tribunal carefully considered the entire sequence of events and stated that the records indicated that Respondent No. 1 approached GCZMA and was thereafter granted conditional NOC in March 2014. Further, the Tribunal noted that it was perplexed by the decision of GCZMA as the NOC directed Respondent No. 1 to obtain information available with NIO regarding impact on river bank morphology, bathymetry, sedimentation, effect on mangroves etc, which implied that such crucial information was

not evaluated and analyzed prior to the grant of NOC. The Tribunal noted with regret that the approach of GCZMA while considering this project was far away from the role it had been mandated as Regulatory Authority under the CRZ Notification. Further, the Tribunal opined that in the era of sustainable development there could not be any disagreement on the need and necessity of putting in place a system which was truly reflective of the precautionary principle for large corporate like GSIDC and M/s. Larsen and Toubro (Respondent No. 7). The Tribunal expected the said Respondents to take steps in this regard in the next three months from the date of the judgment.

The Tribunal directed the project proponent (GSIDC) to move the application before the GCZMA under clause 4.2 of the CRZ Notification, 2011 which should take a decision within the period of four months from the date of the order and till the time the construction of the project was kept in abeyance. It further directed the authority to conduct an inspection and ensure no damage to the coastal environment had taken place. It further asked GCZMA to deposit cost of Rs 5 lakhs with the collector for environmental activities such as mangrove re-plantation etc. and 1 lakh to be paid to the applicant as litigation cost.

Accordingly, the application was disposed of with order as to costs.

Save Mon Region Federation & Anr

v.

Union of India & Ors

Appeal No. 39 of 2012 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Prof. A.R. Yousuf
Keywords: Environment Clearance, Faulty Scoping, Hydro-electric project
Decision: Allowed
Date: 7 April, 2016

JUDGMENT

Save Mon Region Federation, an organization of Monpa indigenous community in Tawang District of Arunachal Pradesh moved an appeal against the grant of Environmental Clearance ["EC"] dated 19.04.2012 to the Nyam Jang Chhu Hydroelectric Project envisaging 780 MW of power generation. The project was proposed in an ecologically fragile area and also involved forest diversion of 89.5271 ha of forest land. The appeal was challenged on the grounds of faulty scoping process for concealment/providing misleading information in the EC application, non-consideration of the adverse impacts on the wintering site of the black necked crane, absence of cumulative impact assessment and riverine basin studies in Tawang river basin, non-assessment of impacts of Catchment Area Treatment and Compensatory Afforestation, faulty public consultation based on inadequate EIA and faulty appraisal process due to lack of application of mind by the EAC on the said relevant issues. On the other hand, the project proponent argued that the public consultation was done in a transparent manner, and that the project is eco-friendly/independent, thereby not having any impact with other existing or planned activities in the region. It was further contended that the EIA had been prepared after undertaking various environmental studies by different institutions.

The Tribunal analysed the provisions of the EIA Notification, 2006 in respect of Category A project which requires the stages of Scoping, preparation of EIA, Public consultation followed by detailed scrutiny (appraisal) of all the documents received thereto. The EAC then makes its recommendation to accept or reject the project proposal followed by reasons for the same. The tribunal described scoping, as the process by which the EAC determines detailed and comprehensive ToR addressing relevant environmental concerns for preparation of EIA Report. It was also acknowledged that EAC determines ToR on the basis of information supplied in Application Form I, and that the information supplied by the project proponent has a cascading effect on the final outcome of the process of obtaining EC. Therefore, the question was whether the process of grant of prior EC to the project suffered from the vice of faulty scoping process.

The appellant pleaded that in the EC application/Form I, the project proponent deliberately concealed material facts such as non-disclosure of the cumulative impacts of

the existing and planned projects when 13 HEP's were proposed in the said river basin, non-disclosure of the project falling within one of the few wintering sites (Located at Zemithang Nylah IBA) of the Black necked crane, an endangered Schedule I species. The Tribunal observed that since the material facts were not brought before the EAC at the scoping stage, the EIA prepared such also missed this material information followed by a faulty appraisal.

The Tribunal held that there has to be application of mind by the EAC when prescribing ToRs/conducting the appraisal process, and therefore even at the scoping stage a decision can be taken by the EAC to recommend rejection of the application for prior EC. It was also established that while hydel power is a renewable and necessary source of energy, the principle of sustainable development requires that irretrievable loss to the environment must not be caused. The tribunal recognized the need for open public consultation, so that affected persons may express their concerns, and then the EAC could take an objective decision on environmental issues.

Therefore, acknowledging that there was faulty scoping, the tribunal suspended the EC and called for a fresh appraisal by the EAC, after undertaking cumulative impact assessment study of the Tawang river basin, study of E-flow requirement for protection of habitat of the Black necked crane to be prepared by the Wildlife Institute of India and to make the said studies available for public consultation.

Accordingly, the appeal was disposed of.

A.M Joseph
v.
The Commissioner of Police & Ors
Application No. 15/2012 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Air Horns, Noise Pollution
Decision: Disposed
Date: 8 April, 2016

JUDGMENT

In this application, the Tribunal had initiated *suo moto* proceedings, based on a representation made by an eighty-year-old citizen of Chennai, wherein he had complained of the use of air horns in vehicles which disrupted the peaceful lives of the people in the area. The Tribunal had, therefore, directed the respondents to file a status report regarding the use of air horns by private and government vehicles.

The Transport Commissioner's report stated that action had been taken to curb high decibel air horns, wherein 8502 air horns had been removed and compounding fee to the extent of Rs. 85 lakhs had been collected. Circulars had also been issued to private colleges and school directing them to remove any such air horns from vehicles and Regional Transport Officers and Motor Vehicle Inspectors were instructed to ensure proper implementation of Rule 119 of the Central Motor Vehicle Rules, 1989 ("the 1989 Act") without any violation. It was also argued on behalf of the Transport Commissioner that the process of publishing directions for all high decibel air horns to be removed was in progress, via television and newspapers. It was, however, found that the pressure level stated in the Transport Commissioner's report was against the provisions of the 1989 Act which banned the use of multi-toned horns.

The Tribunal, considering the powers conferred to the State Government and Tamil nadu Pollution Control Board ("TNPCB") under Sections 20 and 17(1)(g) respectively of the Air (Prevention and Control of Pollution) Act, 1981("Air Act") to give instructions to the Registration Authorities viz., indication at the time of registration that no multi-toned horn should be fitted with the vehicle, cancellation of registration in the event of fitting of such horn and the issuance of Fitness Certificate, and to frame standards of emission which prohibit air horns, directed the issuance of such directions in accordance with Section 20 of the Air Act with TNPCB. It also directed that such steps were to be taken within a period of 6 months from the date of the order and a status report to be filed by both the Government and Pollution Control Board once every 6 months. Suitable directions were asked to be given to the Traffic Wing of the Police Department, Transport Officials and TN PCB to make periodical joint inspection in the whole state, particularly

at major bus stands, to check the use of air horns and remove the same when violations were found.

With the above directions, the application was disposed of.

Ravi D. & Anr
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 73/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Saw Mill, Noise Pollution, Air Pollution, Health Hazard
Decision: Disposed
Date: 8 April, 2016

JUDGMENT

This application was filed praying for a direction against the 4th respondent i.e. M/s. Sri Namatchivaya Saw Mills ('Saw Mill') to prevent noise and air pollution which resulted in a sudden quaking effect with heavy vibration causing mental agony and discomfort.

Perusal of the application showed that there had been litigation throughout in respect of the running of the Saw Mill and even the State Pollution Control Board ('Board') had issued a closure order against the respondent, which had lead to improvement measures to control the noise level. The Board had subsequently temporarily revoked the closure order due to the said improvements

Considering the present application, the Board was directed to conduct an inspection of the premises, the report of which indicated that the unit had been treating the sewage through septic tank and soak pit arrangement and that no trade effluent had been generated with due collection and disposal of saw dust, and was hence complying with provisions under Water (Prevention and Control of Pollution) Act, 1973 and Air (Prevention and Control of Pollution) Act, 1981. The report also affirmed that unit had taken all possible steps to avoid public complaints and a closed shed for the sawing section and machinery had been placed to prevent air pollution. The noise pollution levels were also found to be within the required standards.

Therefore, the Tribunal was of the view that no further order was required and disposed the application with a direction to the Board to continue to monitor the unit's activities and take action in case of any breach of conditions imposed by the Board.

With the above direction, the application was disposed of.

Suo Motu (K.J Poulose)
v.
The Principal Secretary & Ors
Application No. 389/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Effluent discharge
Decision: Disposed
Date: 18 April, 2016

JUDGMENT

This application was filed *suo motu*, based on a complaint received from Shri K.J Poulose, who complained about pollution caused by two companies situated at the banks of river Periyar at the Kalamassery Municipality.

The 4th and 5th respondents i.e. Aluva and Kalamassery Municipality stated that the companies were, in fact, situated outside the two municipalities in an area called Edayar. To this, the Kerala State Pollution Control Board ('the Board') replied that all necessary measures to control pollution of the river in the Edayar Industrial Area and to reduce water consumption by re-using the treated effluents had been taken up by the Board and industries had been provided with delay ponds and energy meters to take care of the effluents. The Board further stated that they were continuously monitoring the quality of the river water via an online monitoring system and 8 cameras had also been installed in various locations near the riverside for the same purpose.

In view of the stand taken by the Board, the Tribunal gave certain directions which involved directions to the Board to continue to monitor the activities of the two industrial units and make periodical checks of the effluents being discharged and take appropriate action in case of any violation and directions to the Municipality to cooperate with the Board to implement the aforementioned monitoring system.

Accordingly, the Aluva and Kalamassery Municipalities were discharged as respondents. With the above observation, the application was disposed.

Rajeev Suri
v.
Vice Chairman, Delhi Development Authority & Ors.
Original Application No. 164 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Recurring cause of action, Storm water drains, Restoration
Decision: Allowed to proceed on merits
Date: 19 April, 2016

JUDGMENT

The Applicant, a resident of Defence Colony, filed an application under Section 15 of the NGT Act 2010, seeking restoration of Kushak nala located in his area following a Reverse Environment Impact Study. It was the case of the Applicant that the nala was a storm water drain that served as a tributary to the River Yamuna, which has been polluted. As per the Applicant, the damages from pollution were aggravated by the fact that the DDA undertook work of covering the nala without environmental clearance and covered only a part thereof to convert it into a park, leaving the covered drain exposed to negative environmental impacts. This incomplete covering, as per the Applicant served as a health risk as rusted iron frames were left exposed, water was being contaminated, and no arrangements had been made for release of gases generated. It was also stated by the Applicant that the ETP set up for treating the drain water was planned in such a manner that it left 67% of untreated sewage remain in the nala, and thereafter flow into the River Yamuna. Additionally, it was also stated by the Applicant that no provisions had been made for waste disposal, and desilting/cleaning works have been rendered difficult after the coverage of the drain. The Applicant was also appealing against the concretization of the floor of the drain, which as per his submissions resulted in stagnation of water and creation of a breeding ground, in addition to impacting the natural flow of water.

The Respondents (the DDA, Govt. of NCT Delhi, MoEF&CC, Yamuna Revitalization Plan 2017) objected the application on the grounds of limitation, claiming that it was filed beyond 6 months of the cause of action. The Tribunal dismissed this objection on the ground that even if more than 6 months had expired since the covering project had been completed, not only would the ill effects have gradually arisen, but each new stage of construction could be regarded as a distinct cause of action. Referring to the decision in Forward Foundation v. State of Karnataka, the Tribunal reiterated that recurring causes of action can be such that they do not invite the implicit consequences of the expression 'cause of action first arose', because they have an entirely distinct nature, with no nexus to the first breach or wrong. The case referred to also drew a distinction between continuing and recurring causes of action, wherein continuing cause was defined as the same act or series of acts, while recurring cause was defined as embodying element of a fresh cause. The Tribunal thereby allowed the matter to proceed on merits.

N. Subrahmanyam
v.
Union of India & Ors
Application No.29/2016 (SZ)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: National Highway, Tree felling
Decision: Dismissed
Date: 21 April, 2016

JUDGMENT

This application was filed seeking a permanent injunction against the respondent authorities from proceeding with the project of expansion of the National Highway, which involved cutting and removal of trees. The applicant had also alleged that the project required an Environment Clearance ('EC'). According to the Ministry of Environment and Climate Change ('MoEF & CC') and the Ministry of Road Transport and Highways, the issue had already been dealt with in the Madras High Court wherein directions were given for planting 10 saplings against every tree uprooted and thus, could not be reopened further. However, it was the contention of the applicant that ongoing project, being 100 km long, was covered in the EIA Notification and prior EC should have been obtained. The respondents denied this and stated that it was only 98 km long.

The Tribunal stated that if the highway was indeed more than 100km, prior EC was required but considering the reply of the respondent of it being only 98 km, the court was unable to accept the applicant's contention. Accordingly, the application failed and was dismissed.

M/s. A.S Water Technology
v.
The Chairman, Tamil Nadu State Pollution Control Board & Ors
MA No.40/2016
in
MA No.326/2014
in
Application No.231 of 2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Groundwater extraction, NOC, Consent
Decision: Dismissed
Date:25 April, 2016

JUDGMENT

This application (MA No. 40 of 2016) was filed to modify the final order passed by the Tribunal on 29.01.2016 in a batch of cases regarding packaged drinking water units insofar as it related to A.S Water Technology, Coimbatore and to permit the appellant to run the unit from 10.00 am to 4.00 pm.

The facts of the matter were that the unit of the appellant was shut down for want of consent to operate by the Board. The said order was consequent to the suo motu proceedings (Application No. 40/2013) before the Tribunal where on the basis of the report of the Board it had taken notice of the packaged drinking water units which were working in gross violation of the basic parameters and without obtaining consent, in view of which many units were shut down by the Board. In the same proceedings the Tamil Nadu Packaged Drinking Water Manufacturers' Association got itself impleaded as a party. Meanwhile, all the separate units started filing independent applications/ appeals before the Tribunal, which were clubbed together.

The appellant challenged the said order of closure before the Tribunal in (Application No. 231 of 2014). The Tribunal vide order dated 31.10.2014 passed an order stating that the defaulting units, including the unit of the appellant would not be permitted to operate. The appellant unit then filed (MA. 326/2014) in the said matter seeking for a direction to operate the unit between 10.00 am to 4 p.m on the grounds that the GO which banned extraction of ground water in the over exploited areas (which also included the appellant's area) had been stayed by the Madras High Court. However, the Tribunal observed that though the High Court had admitted the Writ petition challenging the GO but no interim order staying the same had been passed.

Subsequently, the Tribunal vide order dated 29.04.2015 permitted the unit to have a limited supply of electricity to maintain the membrane and the machinery when the unit was re-categorised as a Category 2 industry. This order had continued till the final order passed on 29.1.2016 which had reiterated the aforementioned order of the Tribunal.

The Tribunal noticed that the appellant had the habit of filing many advance hearing applications before the Tribunal, irrespective of the pendency of the Original Application, which evidenced that the appellant was aware that he had got earlier orders only for the purpose of protecting membrane and machinery. Therefore, the Tribunal denied the interim order prayed by the appellant for permission to operate but found it fit to allow reconnection of the electricity supply only for the purpose of protection of the machinery.

Accordingly, the application was dismissed.

Rajesh Kumar

v.

Ministry of Environment, Forest and Climate Change

Appeal No. 108 of 2015 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Mining, Environmental Clearance, Aravalli
Decision: Dismissed
Date: 25 April 2016

JUDGMENT

The appeal was filed challenging Environment Clearance granted for stone mining in village Rajawas, Haryana allegedly an area falling under Aravalli. The appeal was filed by the local villagers raising issues with respect to the adverse effects of mining on the ground water level impacting ecological balance of the area. Two questions arose for consideration in this appeal, first, whether the mining area was within an area prohibited for mining by virtue of it being reserved forest area/Aravalli Plantation Area/area closed under Section 4 and 5 of the Punjab Land Preservation Act ["PLP"], or otherwise. Second, whether the process of grant of EC was vitiated. The project was a Category A project appraised by the Ministry of Environment & Forest. In response to the appeal, the MoEF claimed that the area was not part of the Aravalli Hill Range and that due procedure was followed in granting EC. The respondents claimed that the area was covered under the category of "Gair Mumkin Pahar" in the Aravalli Hills and does not suffer from any restrictions imposed by the Hon'ble Supreme Court. However, the Forest Department submitted that no permission was granted to the mining lease holders for diversion of forest land. The respondents clarified that the project was not covered by Aravalli Project plantation and was free for mining.

The tribunal accepted the argument of the respondents, referring to the order dated 16.12.2002 passed in T.N. Godavarman v. U.O.I & Ors, that the area concerned was not covered under the notified category or reserved or protected forest, area closed under section 38 of the Indian Forest Act, 1927, under Aravalli plantation and /or area closed under Section 4 or 5 of the PLP Act, and was therefore not prohibited for mining. With respect to the second question, the primary challenge by the appellant was that the process for obtaining EC was improper, as public hearing was not held as per the rules since proper notice was not given. The tribunal was satisfied that notice of hearing was published in a Hindi newspaper, which amounted to sufficient notice as most of the villagers in the region were conversant in the language. Further, finding that nothing suggests non-application of mind by the EAC to grant EC, the tribunal concluded that sufficient safeguards had been prescribed for protecting the environment in the EC, grant of which did not suffer from material infirmity.

The tribunal dismissed the appeal with direction to the project proponent to strictly abide by the terms of the EC especially with respect to regular monitoring of water quality of water bodies as well as ground water level and quality in and around the mining lease area. The Haryana Pollution Control Board and CPCB was directed to carry out surprise checks to ensure the same. The PCB was further directed to tender compliance report before the Tribunal every six month.

Namma Bengaluru Foundation
v.
State of Karnataka & Ors
Application No. 175/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Encroachment, Environmental Degradation
Decision: Dismissed
Date: 26 April, 2016

JUDGMENT

This application was filed with a prayer to prevent encroachment of Bellandur Lake, apart from rejuvenating other lakes and making them environmentally sustainable. According to the applicant, the project proponent had developed a residential developmental project, which was stated to have been situated in the midst of an ecologically sensitive area and that the Project Proponent ('PP') had applied for change of land use from industrial to residential and for a modified development plan which required fresh approvals and other consents. It is the case of the applicants that the pending application for Environment Clearance ('EC'), the PP had been carrying on large scale construction activities in the scheduled property and that there were encroachments on the lake bed and catchment area of the nearby lakes. It held that the project intended to cause change in the flow of water which would affect the rivers located topographically lower than the surrounding lakes and this anticipated large scale loss of biodiversity. With such averments, the applicants prayed for a direction against the respondents to refrain from further construction upon the disputed property pending investigation regarding the permissibility of construction, to restitute the damage caused to the environment, to investigate encroachments and to undertake appropriate legal action.

The Tribunal was of the view that in the presence of a valid EC, it was no possible for the Tribunal to grant any restraint order against the PP and therefore, the prayer was not maintainable. The Tribunal held that it was clear that the State Environment Impact Assessment Authority ('SEIAA') had taken notice of the original EC granted which showed that there was no fresh project and it was only a modification of the same project and thus, the application to condone delay in filing appeal was not maintainable and the application was liable to be rejected as no sufficient reason had been shown to condone the delay.

In view of the same, the application was rejected as not maintainable and was dismissed.

SUO MOTO
Based on Letter from CEE TEE Palaniyappan
v.
District Collector, Sivagamgai & Ors.
Application No. 376/2013

RM. Arun Swaminathan
v.
The Commissioner Municipal Administration and Water Board & Ors.
Application No. 102/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Professor Dr. R. Nagendran
Keywords: Water Pollution, Effluent Discharge
Decision: Disposed
Date: 26 April, 2016

JUDGMENT

The Tribunal took cognizance of the water pollution in Sambai Ootru which is a drinking water source of Karaikudi located in Tamil Nadu, based on the letter of the complainant which stated that despite the orders of the District Collector to ban establishment of commercial complex, automobile service centers, timber saw mills etc., within a radius of 500 m from the water body, yet the same was getting polluted because of failure in effective implementation of the said orders and therefore, the applicant sought intervention of the Tribunal. Application 102 of 2015 was filed for similar reliefs and hence these applications were heard together.

The District Collector stated that 7 bore wells put up by the Karaikudi Municipality were the main source of drinking water for Karaikudi. It was also stated that the District Collector along with other officials inspected the Sambai Ootru and nearby areas, and found establishments that were a threat to the water body within 500 m of the Ootru. The Pollution Control Board submitted an inspection report wherein 24 units of commercial establishments were found present within 500m of the Ootru, it was further informed that the units engaged in water washing were letting out effluents in the open or septic tanks; and units engaged in automobile repair work were spilling grease and oil that ultimately led to ground water pollution. It was stated that a show cause notice was issued to the said units and the water samples from bore wells of Karaikudi Municipality were collected for analysis that showed the water to be slightly acidic but otherwise drinkable. However, the Panchayat argued that the water was unfit for agriculture. The Board also issued a closure order to the Respondent No. 10 unit, however, the same was revoked subsequently after compliances by the said unit.

The CPCB in its inspection also identified automobile workshops and vehicle service stations to be the main source of pollution. The report also mentioned existence of

outlets, discharge storm water from process area and contaminated water from old solar ponds as possible polluting factors in regards with the industry based upon the analysis of the water sample collected from behind the industry showed certain chemical contents to be high. It also reported the overall condition of the water body to be poor. Though, the parameters of water in the Ootru were found to be within limits of drinking water standards. The water quality in bore wells in Koviloor Panchayat was reported to exceed certain parameters which was said to be due to discharge of effluent from the plant of Respondent No. 10 unit. Thus, the CPCB suggested measures to prevent further pollution in the water body.

The Tribunal identified two issues, first as to whether the Sambai Ootru was polluted and if so then what directions were required and second was as to whether the unit of Respondent No. 10 was required to be shut down considering the various reports submitted. In regards to the first issue, the Tribunal found the water body to be within permissible drinking water standards based on the reports filed by the Board, CPCB and Advanced Environmental Laboratory, TNPCB. The Tribunal also directed the Panchayats to take all possible steps to prevent disposal of sewage and domestic waste into the water body, maintain the quality of water and check it regularly with the assistance of the Board, remove the weeds from and around the water body, and strictly comply with recommendation to protect water quality as per the measures suggested by CPCB.

In regards to the second issue, the Tribunal directed CPCB to inspect the unit and the bore well in which the water was found to be alkaline but the report of the Board showed the water to be within drinking water standards. It was also found that progress had been made by the unit in compliance of the recommendations made by the State and Central Board. Therefore, the Tribunal was of the view that the unit must not be shut down for the time being in consonance with the principle of sustainable development. The Tribunal directed the Board and CPCB to conduct an inspection to ascertain whether the unit had fully complied with the said recommendations. In case of non-compliance, the Board was directed to pass appropriate orders including closure of the Unit.

Accordingly, the application was disposed of.

Shanmuga Aqua Industries
v.
The Tamil Nadu Pollution Control Board
MA No.53/2016 in Application No.96/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent
Decision: Disposed
Date:27 April, 2016

JUDGMENT

This Miscellaneous Application was filed by Shanmuga Aqua Industries praying for modification of a final order dated 29.1.2016 insofar as it related to the applicant on the ground that the applicant was not covered under any one of the categories described in the final order passed by this Tribunal.

The applicant's packaged drinking water unit had been running without obtaining consent under the Water ((Prevention and Control of Pollution) Act 1974 ('Water Act') and clearance from the Central Ground Water Authority. Therefore, it was categorized in the 1st category – not permitted to operate and the applicant had a legal duty to close down the unit against which the present application was filed. However, the applicant complained that its unit did not fall under any of the three categories and that it had even been issued a license by the Government of Tamil Nadu, Food Safety and Drug Administration Department, which was valid up to 23.7.2016 and a license from the Bureau of Indian Standard, which had permitted the Unit to run the business. However, the Board had not taken up the application filed for consent due to pendency of a large number of cases and therefore, the categorization of the applicant's unit under the 1st category was a mistake.

The Tribunal stated that since permission had been obtained from the Department concerned, the applicant should make necessary application to the Board for consent to operate in which event it would always be open to the Board to consider the application on merit. It directed the applicant to file the same within a period of one week from the date of the order and directed the Board to pass the order within a period of 4 weeks. It also directed the Board to pass the final order only after it was fully satisfied that the unit had been doing business legally by obtaining license from all the competent authorities. It also clarified that in the event of the Board not considering the application in favour of the applicant, the unit would be governed by the common judgment passed by the Tribunal.

However, considering that the unit had continued its operation despite being categorized under the 1st category, the Tribunal found it necessary to impose a nominal amount of Rs.

20,000 as compensation into the account of the Chennai River Restoration Trust within a period of two weeks from the receipt of this order.

With the above directions, the application was ordered.

M/s. Sterling Water Service
v.
Tamil Nadu Pollution Control Board & Ors
Appeals No.39/2016
And
M/s.Star Bikes
v.
Tamil Nadu Pollution Control Board & Ors
Appeals No. 42/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Trade Effluent
Decision: Dismissed
Date: 28 April, 2016

JUDGMENT

The appeals were directed by units involved in the two-wheeler washing business, against the State Pollution Control Board's ('the Board') dated 12.01.2016 directing the units to provide a grit chamber and an oil water separator and treated trade effluent to be let into the Chennai Metropolitan Water Supply and Sewerage Board sewer.

In their appeals, the appellants stated that they had complied with the order of the Board and hence requested the Hon'ble Tribunal to direct the Board to restore electricity supply to enable them to continue their business.

In view of the appeals, the Tribunal directed the Board to make an inspection and find out the status of compliance, directing the Board to pass necessary orders within a period of two weeks from the date of the order.

With the above direction, the appeal was dismissed.

M/s. TVS Sai Hari Motors & Anr
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Appeal No.40/2016
And
M/s.Limra Electroplating
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal No. 43/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Washing Unit, Electricity Restoration
Decision: Disposed
Date:28th April 2016

JUDGMENT

In this matter, the appellants filed affidavits stating that during the pendency of the appeals, they had already vacated the premises wherein they had been running the two wheeler water wash canter and electroplating centre. They also stated that they had made deposits as an advance to the owner of the premises, which the owner had refused to return till the electricity was not restored in the premises.

Accordingly, the Tribunal directed closure of the appeals with a direction to the Electricity Board to restore the service connection within a period of one week from the date of the order.

M/s. Kamal & Co.
v.
Karnataka State Pollution Control Board & Ors
MA No.06/2016
IN
Application No…(unnumbered) of 2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Effluent Collection Tanks, Polluter Pays Principle, Consent
Decision: Disposed
Date: 29 April, 2016

JUDGMENT

The application was filed by the applicant unit for direction to the Karnataka State Pollution Control Board to dispose of its application for consent in view of the Tribunal's previous orders passed on 15th May, 2015 in Application No. 225 of 2014. Pursuant to a direction dated 31.03.2016, the Board filed an inspection report which elucidated certain short term and long term measures with respect to the disposal of the trade effluents by the unit in question.

As per the report, the short-term measures included installation of effluent collection tanks, arrangements for collection of effluents and replacement of fuel with LPG for firewood to minimize air emission. On the other hand, the long-term measures involved relocation of the unit within 2 years; payment of Rs 15,000/- under the polluter pays principle and filing of applications for consent.

In view of the Status Report, the Tribunal held the closure orders passed by the State Pollution Control to be valid and banned any unit from disposing off trade effluents with or without treatment into the public sewer network of the respondent No.4 and directed units to bring the measures provided by State Pollution Control Board into effect.

The State Pollution Control Board was directed to pass appropriate orders in the manner known to law in any event within a period of two weeks from the date of receipt of order. Accordingly, the application was disposed.

M/s. Vigneshwara Industries
v.
The Executive Officer & Ors
Application No.109/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Trade Effluents, Water Pollution
Decision: Allowed
Date:29 April, 2016

JUDGMENT

The applicant had filed this application against the order of the Executive Officer, Town Panchayat dated 3. 02.2014 for closure of the applicant's unit due to generation of trade effluents being generated from the industry. To settle the same, the Tribunal had previously directed the State Pollution Control Board to inspect the unit and file a status report of the same.

Accordingly, inspection was carried out in the said unit wherein it was that there was no generation of trade effluents as it involved only a dry process. The report also mentioned compliance with various conditions, which affirmed that the unit had been taking appropriate measures to prevent any environmental degradation.

In view of the status report, the impugned order was held invalid. However, the Board was directed to continue to monitor the performance of the unit and pass appropriate orders as and when required to control the odour from the unit.

With the said directions, the application was disposed.

Ms. M. Baby

v.

The District Environmental Engineer & Ors

Application No.35/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Powder Coating Factory, Pollution
Decision: Dismissed
Date: 2 May, 2016

JUDGMENT

This application was filed for the closure of the Powder Coating Factory run by the 4th respondent directing it to shift the factory from the residential area and against the 5th respondent to control the pollution on the event of the lease of property to a 3rd party in the future.

Herein, the fourth respondent had been operating a powder coating factory in a unit leased by the fifth respondent. Upon inspection of the premises following the filing of the application, the State Pollution Control Board stated that the premises had been vacated and no powder coating activity was being carried out; neither was any machinery found in the premises. In view of this finding, the Tribunal did not find the need to pass any order except to directing the 5th respondent to keep the pollution in check whilst leasing out the premises to a third party.

With the above observation, the application was closed.

Jagannath Mane
v.
Union of India & Ors
Application No. 264 of 2015(PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Dr. D.K. Agrawal, Hon'ble Mr. Prof. A.R Yousuf
Keywords: Stone crusher, Mining, Consents, Compensation
Decision: Allowed
Date: 2 May 2016

JUDGMENT

The application was filed against the illegal mining and stone crushing activities carried out by some unidentified persons in District Khargaon in Madhya Pradesh. The applicant had made a complaint before the Mining Department. However, since no action was taken, he had to approach the Tribunal.

The respondents in reply to the same submitted that they had already taken notice of the complaint made by the applicant and have sealed the stone crusher in question which was found operating without taking permission from SEIAA/PCB. They had also registered a case and imposed penalty under the M.P Minor Mineral Rules and issued show cause notice against the same. Since the directions had already been taken, the application needs to be disposed. However, the private respondent (Contractor) who was impleaded subsequently, submitted to the Tribunal that the stone crusher was installed for construction of a road which was part of the NTPC project for which EC had already been taken and therefore no separate permission/consents for installation of stone crusher was required. He further submitted that the said facts were brought before the District Collector and the proceedings of show cause were subsequently dropped.

There were three points for determination before the tribunal. First, whether there was any illegal mining as alleged by the applicant, second, whether the stone crusher was being operated with the requisite permissions, and third, regarding the directions to be issued.

The tribunal found that stone crusher was being operated for road construction which was part of the NTPC project and involved only excavation of earth for laying of the road which cannot be termed as mining/illegal mining. With respect to the second issue, the tribunal held that even if EC was granted to the project for which the stone crusher was installed, yet separate permission/consent was required to be obtained for its installation and operation in terms of Section 21(1) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

The Tribunal observed that the private respondent had not taken the requisite permissions under the relevant statutes and found the stone crusher carrying out its

operations in violation of the same. Thus, held that the same cannot be permitted to operate till valid consents were obtained, further directing the respondent to pay environment compensation of Rupees 1 lakh to the State Pollution Control Board within one month from the date of the judgment which should be used for restoration of the said area.

Accordingly, the application was disposed without any cost.

M/s. Krishna Mines
v.
The Director, Government of India & Ors
Application No.74/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: SEIAA, EC, Polluter Pays Principle
Decision: Disposed
Date: 3 May, 2016

JUDGMENT

This application was directed against a letter issued by the SEIAA at Chennai in which the respondent authority had informed the applicant that Environmental Clearance (for 0.4 MTPA limestone quarrying) would only be given after receiving direction from the National Green Tribunal in the matter relating to EIA Notification. This communication was challenged on the grounds that the application was made in accordance with all rules, with completion of all proceedings and in such circumstances, it was the statutory duty of the respondent authority to pass orders on merit, whereas, the impugned letter amounted to refusal of the respondent authority from performing its statutory duty.

The respondent authority submitted that the Principal Bench of the Tribunal had set the post facto approval aside and orders were passed imposing compensation to be paid based on the "Polluter Pays Principle" in S.P. Muthuraman's case. The Tribunal confirmed the same and referred to the directions given by the Principal Bench in respect of M/s. S.S.M. Builders and Promoters, which stated that in addition to the condition stated in the EC, three more conditions should be carried out by the concerned authorities and the project proponent which included certification of compliance of all pre-construction conditions by the SEIAA, efforts to use treated wastewater optimally within the premises and maintenance of natural draining without any concretization. It further stated that that possession of the project shouldn't be given to a third party prior to inspection by the SEIAA, State Pollution Control Board and a representative of the MoEF &CC.

In these circumstances, the Tribunal directed the SEIAA and SEAC to pass appropriate orders, taking into consideration the Principal Bench's directions. Accordingly, the application was closed.

P.M Gunasekaran
v.
The Tamil Nadu Pollution Control Board & Ors
Application No.4/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Ground Water, Car Washing, Air pollution, Noise pollution
Decision: Disposed
Date: 3 May, 2016

JUDGMENT

This application was filed before the Tribunal, praying for an order of permanent injunction, restraining the 5th respondent project proponent from using the groundwater resource for the operation of its car service station cum repair unit and causing further air and noise pollution. The application also prayed for a direction to the Respondent Nos. 1 to 4 to take legal action against the project proponent for the reasons stated above.

The project proponent in the affidavit dated 22.04.2016, submitted that in order to maintain a cordial relationship with the applicant and the other residents of Kathiravan Salai, certain measures had been taken to redress the grievance of the applicant. These measures included the closing of the car wash unit and removal of ETP facility for recycling wastewater, the closing of the gate adjoining the compound of the applicant, access to only 2 gates – Entry and Exit, thereby closing all other gates in the premises and finally, prevention of traffic congestion on the road.

By virtue of the stand taken by the 5th respondent, the relief asked for by the applicant had been addressed and accordingly, the application was closed, with no order as to costs.

Smt. Octavia Albuquerque & Ors

v.

Union of India & Ors

Appeal No. 25/2013 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Dr. D.K. Agrawal, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Environment Clearance, CRZ Clearance, Limitation
Decision: Dismissed
Date: 3 May 2016

JUDGMENT

Originally a writ petition was filed by the appellants in the High Court of Karnataka against the grant of Environment Clearance ["EC"] dated 05.06.2010 by the Karnataka State Environment Impact Assessment Authority to the Mangalore Fishery Harbour, III Stage Project being undertaken by the Directorate of Fisheries in Karnataka which was subsequently transferred to the tribunal. The appellant had also sought quashing of the CRZ clearance dated 16.04.2010 and the Coastal Zone Management Plan ["CZMP'] of the concerned area alongwith the Notification of the MoEFCC in respect of the proposed additional fishery harbour facilities.

It was the case of the appellants that the project relates to the expansion in the non-contiguous land at Hoige Bazaar in Bolar which was a critically ecological sensitive wet land area within the contemplation of CRZ, 2011 where the natural creek (between the low tide and high tide lines) would be filled up, and storm water drains to the sea would be blocked leading to hygiene and sanitation issues. It was argued that the CZMP did not reflect ground realities, as it failed to show the natural creek/other important features of the area, and therefore must be ignored. The appellants objected to the project on the ground that the project falls under CRZ I and not CRZ II and as per the CRZ Notification, 2011, a fish processing unit is not permissible under CRZ I and therefore the EC granted was not sustainable. As per the MoEFCC, the project was proposed to decongest the existing fishery harbour and improve harbour sanitation conditions. The respondents contended that detailed studies and investigation had been undertaken for the project and it would be ensured that neither the creek nor the storm water drains are blocked.

Thus, the questions for the consideration of the tribunal were as to whether the EC/CRZ clearance granted to the project were bad in law and whether the project would cause any damage to the existing creek.

The Tribunal analysed the provisions of the CRZ Notification 1991 and 2011 to examine as to whether the expansion of fishing harbour was a permissible activity under the said Notification. The CRZ Notifications' 1991 and 2011 were issued by the MoEF in exercise

of powers under Rule 5 (3)(d) of the Environment Protection Rules declaring coastal stretches of seas, bays, estuaries, etc influenced by tidal action upto 500 metres from the HTL and the land between HTL and LTL as CRZ and imposing prohibitions on setting up of new/expansion of existing industries such as fish processing units except those related to the water front or directly needing foreshore facilities. The tribunal held that the project (Fishing Harbour Development Project) was well within the statutory provisions and covered under the permissible activities under the Notifications as it directly required foreshore facilities/related to the water front. The Tribunal further noted that there could not be any challenge to the CRZ clearance in respect of the prohibition of fish processing unit since the project proponent had already dropped for the ice plant/fish processing in the said area for not being permissible in CRZ area. Thus, the CRZ clearance was held valid by the Tribunal. To examine the question as to whether there had been any damage to the creek, the Tribunal relied upon the report of the Expert Committee constituted to examine the status of the creek. Further relying upon the satellite imageries, Survey of India Map etc, the Tribunal observed that there would not be any destruction to the creek since it had changed from time to time. However, it also noticed shrinking of the creek due to filling up undertaken for the impugned project. The Tribunal noted that the Fisheries Department had submitted before the High Court that the creek had to be dredged and redefined in order to make it economically and environmentally viable. Thus, it was then when the creek area got reduced. The Tribunal observed that the creek was used for the purposes of parking and repairing of the boats by the fishermen and also as a passage of storm water discharge. The Tribunal recorded the statement of the respondents that the creek would not be obliterated but redefined thus, giving more facilities to the fishermen community which was in favour of the expansion project. On the basis of the submissions made, the Tribunal found no reasons to interfere with the EC and held the same valid.

On the issue of limitation, the Tribunal noted that the EC granted in 2010 was challenged before High Court in the year 2012 instead of filing the same before the Tribunal. Thus, the appeal was barred by time.

The Tribunal found no merit in the appeal. However, for maintaining environment and ecology of the area, it passed certain directions to the respondents to not to block the creek and redefine the same by providing boundaries and further not to disturb the storm water pass etc and asked the project proponent to submit a compliance report alongwith photographs of the creek and sought inspection of the area by the experts after completion of the project.

Accordingly, the appeal was disposed.

S. Vadivel
v.
The Secretary to Government & Ors.
Application No.217/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Garbage Dumping, Water Body, Solid waste
Decision: Dismissed
Date: 4 May, 2016

JUDGMENT

This application was filed with a prayer to restrain the respondents from using the Kallukuttai Lake in the Ariyalur District for dumping garbage and manure farming. The applicant submitted that the disputed lake was used for bathing, washing and fetching drinking water by the residents of the village since past three decades and the proposal to use it as a garbage dumping yard was a cause of concern for the villagers as dumping of such garbage meant damage to the environment leading to unhygienic and unhealthy atmosphere, affecting the health of the people.

When the respondent authorities paid no heed to the villagers complaints, a writ petition was filed in the High Court of Madras, wherein the court directed to consider the objections raised by the villagers. Subsequently, the District Collector made an enquiry for the same and stated that the proposed site would be used for the aforementioned activities only after obtaining required permission from the State Pollution Control Board and after taking all pollution control measures.

However, the applicant contended that the respondents had already started dumping garbage without following prescribed measures, thereby spoiling the water body. In its reply, the Municipality stated that since there was no Solid Waste Management facility in place, garbage was dumped at a location called Kommedu village and a few other places which were all wastelands but the abovestated location was not adequate for a proper infrastructure under the MSW Rules, 2000. Thus, an alternative site was alienated in favour of the Municipality and an application was submitted to the State Pollution Control Board for granting authorization to establish SWM facility, which too was granted. The respondent further stated that the site in question was not located in a water body and was classified as poromboke land which was earlier a quarrying site which resulted into formation of a low lying area and accumulation of rain water at some places. After being satisfied with the inspection and the proposal that the site would be leveled and raised 60 cm above the road level to prevent stagnation of rainwater, the State Pollution Control Board subsequently granted the No objection certificate. It also confirmed that the facility would be utilized for segregating solid waste to biodegradable and non-biodegradable components. It was further submitted that prior to the transfer of the disputed site, public

hearing was conducted and only after considering the objections of the public, the District Collector had alienated the land in favour of the Municipality.

The Tribunal noted that the disputed site was not a water body but due to depressions it accumulated rain water which was used by the villagers although not for drinking water. The Tribunal stated that it was the statutory responsibility of the Municipality to scientifically dispose the solid waste. Since the earlier site was not adequate, the Municipality found the present site which met all the parameters. Thus, the SPCB rightly granted the NOC for the said site followed by an authorization under Rule 6 (3) of the MSW Rules, 2000. The Tribunal stated that it was the duty of the local civil authorities to collect, transport, segregate and process the solid waste, for which certain conditions were imposed in the authorization letter, apart from setting up of the waste management facility.

The Tribunal was of the view that the conditions prescribed in the authorization letter would take care of the apprehension of the applicant and that he always had the option of raising the issue if such conditions were not fulfilled. The Tribunal also stated that it cannot deny the establishment of a scientifically designed disposal facility in the larger public interest. Therefore, the Tribunal directed the respondent to take care of the issue of leveling and raising the height of the site to prevent rain water enter into the unit and construct a compound wall and establish a green belt before the waste was transported to the site and processed. The SPCB was directed not to extend the period of authorization till all such conditions were fulfilled by the Municipality.

With such directions, the application was disposed of.

Bio Diversity Management Committee
Vs.
Union of India & Ors
Application No. 06/2014 (CZ)

Coram: Justice Mr. Dalip Singh, Dr. S.S. Garbyal
Keywords: Biodiversity sites, biological resources
Decision: Disposed
Date: 4 May 2016

JUDGMENT

The application was filed by the Biodiversity Management Committee for declaring village forest of Keoti in district Rewa, Madhya Pradesh as Biodiversity Heritage Site in terms of section 37 of the Biodiversity Act, 2002 and preservation of the biological resources and threatened species found therein. The applicant alleged that the construction of biodiversity parks by the State Government, illegal mining activities and construction in the name of development for tourism was causing environmental damage to the said area. It further alleged that the collection of biological resource named 'tendu patta' found in the said area was been undertaken without securing the rights of the applicant who had the right to levy charge for collection of the resource for commercial purpose as per the provisions of the said Act. Accordingly, the applicant prayed to direct the Respondents to immediately stop carrying out any construction, commercial or recreational activities and restitute the area to its original form, declare the area as Bio Diversity Heritage Site, take steps to rehabilitate threatened species, share revenue benefit, and pay charges for collection of biological resources.

The State Government ensured that no mining, construction or alteration of habitat in any manner was allowed in the said area. It was submitted by the State Biodiversity Board that on request of the applicant, the identification of various biological resources to declare the area as Biodiversity Heritage Site was processed.

Observing that there are no guidelines framed for implementation of the Biological Diversity Act and rules pertaining to biodiversity cess benefit sharing as well as declaration of the area in question as Biodiversity Heritage Site, the Tribunal directed the State to adopt a criteria and formulate guidelines for biodiversity sites in Madhya Pradesh within a period of six months from the date of the judgment.

Pointing out the importance of biodiversity as the support system of the planet, the significance of the local biological resources and protection of the traditional knowledge of communities associated with it, the Tribunal directed the State to devise comprehensive strategies to identify Biodiversity rich sites and to protect and conserve them and putting a system into place where interests of all stakeholders are adequately addressed. It further emphasized on the need to protect the interests of the local communities by payment of reward or compensation and directed the State to come out

with the proper method for equitable sharing of benefits. For this, the Tribunal made it imperative for the State to collect baselines data in the form of biodiversity registers which contain comprehensive information on the availability of the local biological resources, their medicinal and other uses and the traditional knowledge associated with it.

The application was disposed of with the said directions

Paryavaran Sangharsh Samiti
v.
Union of India & Ors
Appeal No. 28 of 2013 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. D.K. Agrawal
Keywords: Hydro-electric Projects, Forest Rights Act, 2006, Doctrine of Public Trust
Decision: Disposed
Date: 4 May, 2016

JUDGMENT

The appellant organization was formed by the villagers of an area affected by the Kashang Hydro Electric Project in Kinnaur District of Himachal Pradesh who filed the appeal challenging the grant of Forest Clearance for diversion of 17. 6857 hectares of forest land by the MoEFCC, on the grounds that there had been a gradual decrease in forest cover in the concerned district. The diversion was for 130 MW of the Integrated Stages II and III of the project. Among other contentions, the appellant objected to the fact that the requisite permission hadn't been obtained from the National Board of Wild Life, under the Wildlife (Protection) Act, 1972 which was necessary as a sanctuary existed close to the project namely the Lippa- Asrang Wildlife Sanctuary, that by applying for forest clearance separately for each stage of the project, the project proponent was projecting low area of forest in an attempt to mislead, thus, it was the contention of the appellant that as a complete EC for all stages had been obtained, similar approach should have been adopted for Forest Clearance also, the other grounds included lack of crucial impact assessment studies, adverse impact on the Chilgoza pine vegetation, Non-compliance of the Forest Rights Act, 2006 and grant of approval for diversion of forest land without settlement of rights and claims of the residents over the proposed forest area being illegal. The appellant also claimed violation of the Panchayats (Extension to Schedule Areas) Act, 1996 as the concerned district was a Schedule V area which required consultation with the Gram Sabha prior to acquisition of land and before rehabilitation of the persons affected by the project. Thus, it was the case of the appellant that the various factors of the project were likely to have a disastrous impact on the environment of the area.

In response to the appeal, the Ministry submitted that various environmental impact studies were done by ICFRE on consideration of which the FAC had recommended the project for FC. Also, the approval was granted subject to the implementation of the recommendations of the NBWL with respect to the impact of the project on the Sanctuary. It further stated that the rights and claims of the affected persons under the Forest Rights Act, 2006 were already settled, the compliance report of which was submitted by the State Government to the Ministry. However, the issue with respect to the violation of the

Panchayats (Extension to Schedule Areas) Act, 1996 was not traversed which was left for the Tribunal to determine.

During the course of the arguments the parties pleaded that the appeal may be disposed of by issuing necessary directions for compliance of the Forest Clearance condition with respect to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 in light of the Panchayats (Extension to Schedule Areas) Act, 1996.

The Tribunal observed that though the jurisdiction of the tribunal is confined to the enforcement/compliance of laws in Schedule I to the NGT Act, 2010, dealing with hydel projects and their consequences are also within the ambit of the tribunals powers. Referring to the recommendations of High Level One Man Committee constituted under the directions of the High Court of Himachal Pradesh in CWPIL No. 24 of 2009 which recommended "the State Govt to carry out basin-wide EIA's for all river basins of the State and till it is done, no more hydel projects should be allotted and where allotted must be withheld", the Tribunal emphasised on the necessity of having a cumulative impact assessment of all the hydel projects in the area including the existing, proposed and under construction projects. The Tribunal with respect to this issue had sought reply from the Ministry, however, it found that till date no such assessment was carried out.

The tribunal referred to the doctrine of public trust as per which the state has a responsibility to meet inter-generational equity by resorting to the principle of sustainable development, and striking a balance between development needs/environmental degradation, while ensuring that resources are protected for the general public and not only promoted for the use of a few. Accordingly, since several projects were operating in the area, the tribunal urged the State of Himachal Pradesh to take note of the anxiety expressed by the tribunal with respect to their hazardous effects.

The Tribunal finally concluded that the proposal of the Forest Clearance shall be placed before the Gram Sabha as per the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as stipulated in the in the Forest Clearance granted by the MoEFCC, the Gram Sabha to consider all community and individual claims including the issues of livelihood, and to also take up mitigation measures with the project proponent. The Tribunal granted 3 months' time for completion of the proceedings before the Gram Sabha and accordingly disposed of the appeal with the said directions.

The Forward Foundation & Ors

v.

State of Karnataka & Ors

O.A. No. 222 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Dr. D.K. Agrawal, Hon'ble Professor A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Environment Clearance, Wetlands, Compensation, Polluter pays principle
Decision: Disposed
Date: 4 May 2016

JUDGMENT

The Karnataka Industrial Area Development Board ["KIADB"] allotted land to the Respondent No. 9 and 10 (project proponents) to set up a software technology park, commercial and residential complex, and multi-level car parks. It was the case of the applicant that the development projects were on catchment and wetland areas which feed 'Rajakaluves', that drain rain water into Bellandur Lake. While appraising the projects for Environment Clearance, the SEAC observed that the project was lying between two lakes, Bellandur and Agara lake and directed the respondent to submit a revised NOC from the Bangalore Water Supply and Sewage Board, and spare the buffer zone around the Rajakaluves. It was the case of the applicant that the NOC was obtained by misrepresenting that NOC was required only for residential units, forming a very small part of the Mixed Use Development Project ["MUDP"]. Further, as per the applicant the NOC was granted on the conditions that there would be no construction in the lake catchment area and valley and that the EC had to be obtained and no construction would commence till such time, the respondent violated such condition and commenced construction. Additionally, as against the Bangalore Development Authority, the applicant argued that the conversion of the impugned land from "protected zone" to "residential sensitive" was an illegal act. It was also argued that the construction of wetland between two lakes violated rule 4 of Wetlands (Conservation and Management) Rules, 2010. Thus, the applicants pleaded that the projects of the Respondents were bound to be disastrous for the environment leading to substantial damage to the water bodies and massive scarcity of water in Bangalore.

On the other hand, the respondents argued that none of the conditions were violated by it, and no damage had been caused to the wetlands/Rajakaluves. It was also submitted that the project had obtained all the NOC's from the respective authorities alongwith the Environment Clearance by SEIAA granted on 17.02.2012. The respondents also opposed the application on grounds of maintainability and limitation stating that the conversion of land use under the master plan was not covered under the NGT Acts and that the challenge to EC was barred by time. It was further contended that the Tribunal must not

entertain the application since a writ petition on the issue was pending before the High Court of Karnataka and therefore the same was barred by the principle of res judicata. However, the contentions raised by the respondents with respect to maintainability and limitation were rejected by the Tribunal.

Originally, the said arguments were dealt by the Tribunal and decided vide judgment dated 07.05.2015 wherein the Tribunal rejected the plea of the applicants to stop the development project and allowed the same to go ahead. However, it constituted a committee to visit the disputed sites and respond on various issues in relation to violation of the EC conditions and the adverse effects of the said project. The Tribunal took the view that the project proponents were liable to pay environmental compensation for raising illegal and unauthorised construction and imposed penalty of Rs. 117.35 and 22.5 crores, being 5% of the project value on Respondent 9 and 10 respectively. The said judgement was challenged before the Supreme Court which vide order dated 20.05.2015 disposed of the appeals with a direction to file application before the Tribunal with a prayer to recall the order and decide afresh on merits after hearing the parties. The respondent filed applications before the Tribunal in terms of the order of the Supreme Court as a consequence of which the Tribunal agreed to hear the parties on the imposition of environmental compensation and merits in respect of the same. It was based on the said factual matrix that the present matter was entertained by the Tribunal. The respondents project proponents mainly argued that the they had not committed any violations and therefore not liable for any compensation or damage for environmental degradation. The Respondents No. 11 and 12 supported the case of the applicants and argued that the project was being constructed on land classified as "Sensitive Zone" as per Regional Master Plan, 2015 and that the construction was without the mandatory clearance. It was further argued that multiple violations had been committed by the project proponents relying over the report of the High Powered Committee constituted by the Tribunal to assess environmental violations.

Based on the facts stated above, the tribunal had to determine, first, whether the project proponent had commenced construction before granting of EC second, whether any part of the Agara lake had been encroached upon causing environmental degradation, third, whether any conditions of the EC had been violated, fourth, whether the EC granted should be reviewed, fifth, whether muck had been dumped on the Rajakaluves causing environment damage and lastly, whether the project proponents were liable to pay environmental compensation and if so the quantum.

To determine whether construction had been started before EC was granted, the tribunal elaborated upon the meaning of 'construction', and held that construction envisages different processes starting from clearing the land, excavating it for the foundation, building the foundation and all work until completion. Based on the inspection note prepared by the High Powered Committee, it was held that Respondent No. 9 [Mantri Techzone Pvt. Ltd] had commenced construction prior to grant of EC, and interfered with the Rajakaluves. Since the land allotted to the PPs were agricultural lands included

Kharab lands, a condition in the EC was inserted to the effect that Kharab land could not be used for any purpose save for maintaining as a green belt area, and this condition was also violated. Further, it was found that Respondent No.9 had encroached a portion of the lake and caused environmental degradation, by putting debris, muck, and excavated soil into the Rajakaluves, and had even filled up the creek of the lake. Similarly, it was also found that Respondent No. 10 [Core Mind Software and Services Pvt. Ltd] had started construction prior to the grant of EC, encroached upon the Rajakaluves, and caused environmental degradation, though to a lesser extent than Respondent No.9.

The court applied the polluter pays principle and found the respondents liable to pay damages as had been held by the Apex court in various judgements. When deciding the nature of compensation to be paid for the degradation, the tribunal elaborated upon the concepts of compensatory damage, i.e. plaintiff is compensated for actual loss (pecuniary or non-pecuniary) for breach of contract or tort, and non-compensatory damages, i.e. award to punish the defendant for his conduct even when no damage is caused. Pecuniary damages were defined as those paid for damages which could be estimated and compensated in terms of money, while non-pecuniary damages were for such loss that could not be assessable arithmetically, and generally for personal injuries, inconvenience, discomfort, damage to reputation etc. Consequential damages were defined as those that arise as a proximate consequence of a wrongful act. Nominal damages were defined as those awarded when no real damage has been caused/cannot be proved, to recognize a right.

Considering the nature of the environmental degradation, the Tribunal declined to modify the compensation amount imposed on Respondent No. 9, however reduced it for Respondent No.10 from 5% to 3% of the total project cost (Rs 13.5 crores). To prevent further environmental degradation, the Tribunal passed certain directions including demolition of the boundary walls raised by the project proponents within the disputed lands, direction to the lake authorities to remove encroachments from all water bodies and lakes in Bangalore, restoration of the lake area encroached upon by the project proponents, maintaining green belt as buffer zone between the project and lake area, development of storm water drains, prevention of muck/sediment from flowing into the water bodies, kharab land to be maintained as green belt, treated water to be used for the purpose of construction of the project, traffic density study to be carried out. Further the SEIAA, Karnataka was directed to amend EC after incorporating all the directions laid down in the judgement and supervise the projects, while the State was directed to submit a proposal to the MoEF for demarcating wetlands within four weeks from the date of judgement and consequent to the approval of MoEF, the same to be notified as per the Wetland Rules, 2010. It was further made clear that the amount of compensation had to be deposited prior to the issuance of the amended Environment Clearance.

The application was thereby disposed of.

Raghuwar Dutt Tiwari & Anr
v.
Union of India & Ors

Appeal No. 97 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. D.K. Agrawal
Keywords: Hydro Electric Project, Limitation
Decision: Dismissed
Date: 4 May, 2016

JUDGMENT

The Application objected to the construction of underground tunnels/use of explosives for the Singoli-Bhatwari Hydro Electric Project on river Mandakini in Uttarakhand, and sought restructuring of the project as per the recommendations of the Committee of the Rajya Sabha and IIT Consortium ["the Committee"]. The Tribunal noted that the applicant pleas on the danger of underground tunnels had been addressed in another application numbered as O.A No. 12 of 2011 filed earlier before the Tribunal, which had been dismissed for being barred by limitation, and since no appeal had been made against the judgment, it had gained finality, therefore the applicant was barred from contesting the same question. The Tribunal further mentioned that the prayer to form a committee to examine the feasibility of abstracting water by making partial obstruction on the river/putting on hold activities of the project until completion of the studies by the Committee would amount to 'putting the clock back on the project', as substantial work had already commenced with valid clearances for a number of years.

Since the application was covered by the judgment passed in OA No. 151 of 2014, it was dismissed on the same grounds as barred by limitation.

Bharat Jhunjhunwala
v.
Union of India & Ors

Original Application No. 151/2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. D.K. Agrawal
Keywords: Hydro-electric project, Limitation
Decision: Dismissed
Date: 4 May 2016

JUDGMENT

The application was filed in respect of Singoli-Bhatwari hydro-electric project ["the Project"], on the river Mandakini, in Uttarakhand by the applicant, a former professor of economics, who has approached various forums regarding the environmental hazards of hydroelectric power projects. The contention of the applicant was that the said Project which was severely damaged in the flood disaster of 2013 started its reconstruction without complying with the conditions laid down in the Environment/Forest Clearance and various other safeguards, of which he became aware only in the month of February, 2014. It was also alleged that no permission from National Board of Wildlife was taken for transfer of the Project to the State Forest Department further contending against the faulty design of the project.

The applicant therefore prayed for directions to the Respondent [L&T Uttaranchal Hydro Electric Pvt. Ltd.] to implement the CAT plan as required under the Environment Clearance, to obtain clearance of the National Board of Wildlife for the transfer, and improve the design of the project. A fresh Cost-Benefit analysis was also sought from the first Respondent, i.e. Ministry of Environment & Forests.

The Respondent's, on the other hand objected to the application on several grounds, the first being that the same was barred by limitation for being filed with inordinate delay which was not sufficiently explained, as provided under Section 14(3) of the NGT Act, 2010. Second, it was contended that a previous litigation (Jaya Prakash Dabral v. Union of India & Ors, Application No. 12 of 2011) where both the EC and FC of the project were under challenge, was also dismissed by the Tribunal for being barred by limitation vide order dated 14.12.2011. Subsequently a Writ petition on similar grounds was also dismissed by the Uttarakhand High Court vide order dated 15.04.2013 giving liberty to the applicant to approach the Tribunal, however, the same was not availed. Thus, the respondent contended that the application was also barred by the principle of estoppel.

The Tribunal observed that the project had commenced after obtaining the requisite clearances in the years 2006, 2007 and 2009, granted by the Ministry of Environment &

Forests, following the principle of Sustainable Development and Precautionary Principle. Additionally, it also took note of the fact that the application did not specifically point out the exact violations of the Environment and Forest Clearances.

The Tribunal dismissed the application holding that the application was inordinately delayed and barred by limitation and failed to provide reasons as to why steps were not taken in terms of the decisions in the previous litigations before the Tribunal and the Uttarakhand High Court. The Tribunal also rejected the reasons of delay relied by the applicant in the case of Raghuvir Dutt Tiwari & Anr v. Union of India & Ors for not being a suitable justification for delay.

Khatema Fibres Limited
v.
Uttarakhand Environment Protection and Pollution Control Board
Appeal No. 20 of 2016
AND
Khatema Fibres Limited
v.
Uttarakhand Environment Protection and Pollution Control Board
Review Application No. 02 of 2016 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Dr. D.K. Agrawal, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Review jurisdiction, Limitation
Decision: Dismissed
Date: 4 May 2016

JUDGMENT

The application was filed seeking review of the order dated 10.12.2015 wherein the industry of the applicant was shut down for being polluting and non-compliant and direction was given that the same could be permitted to commence its operations for two weeks and after a joint inspection is carried out by the Uttarakhand Environment Protection and Pollution Control Board ["UKPCB"] and the Central Pollution Control Board ["CPCB"], consent to operate could be granted subject to orders of the Tribunal. Thus, in the review, the applicant prayed that the UKPCB and CPCB be directed to re-examine whether the applicant industry uses chemicals in its pulping process/generates black liquor, and also to allow the industry to resume its manufacturing activity. It was also the case of the applicants that the IIT report was not produced before the Tribunal before passing of the said judgment. Since the application for review was filed beyond the prescribed period, a Miscellaneous Application was filed for condonation of delay.

Rule 22(1) of the NGT (Practice and Procedure) Rules prescribes a period of 30 days from the date of receipt of the order for filing of review application under section 19 (4) (f). It was the case of the applicant that Section 5 of the Limitation Act would apply to the present proceedings as the NGT Act does not mention the powers of the Tribunal for entertaining review applications beyond the prescribed period of limitation. The tribunal relied upon its judgement passed in *Sunil Kumar Samantha v. West Bengal Pollution Control Board, 2014 vol 2 NGT Reporter 250* and examined the wordings of Sections 14 and 16 of the NGT Act in contradistinction with Rule 22(1) to decide its power to condone delay under Section 19. It was found that while Sections 14 and 15 impose an outer limit beyond which the tribunal can no longer condone delay, whereas Rule 22(1) contains no such specification, making it a directory rule as opposed to the mandatory character of Sections 14 and 16. Therefore, the tribunal held that if the language of the section does

not create a legal impediment to applying the provisions of the Limitation Act, Section 5 thereof would empower the tribunal to condone the delay beyond the prescribed period. Consequently, the delay in filing of the review was condoned.

With regard to the prayer in the review, the court held that merely because a document has not been produced before a tribunal cannot be a ground to invoke review jurisdiction under Order XLVII Rule1 of CPC, 1908. It was also observed that the issue was pending in a connected matter (Appeal No. 20 of 2016) which was initiated by the applicant against the order of the UKPCB refusing consents to the industry after the same was found non-compliant.

The Tribunal while observing that an industry cannot be permitted to operate unless it is found to be non-polluting, dismissed the review application though with some directions to the industry to install Effluent Treatment Plant, furnish bank guarantee of 10 lakhs in favour of the UKPCB and operate for period of six months after which it would be inspected and granted consent subject to compliance of the conditions and orders of the Tribunal.

Naresh Zargar
v.
State of Madhya Pradesh & Ors.
OA No.34 of 2016

Ramakant Gautam & Ors.
v.
State of Madhya Pradesh & Ors.
RA No. 1 of 2016 in OA No. 496 of 2015

AND

Himmat Singh Shekhawat
v.
State of Rajasthan
Miscellaneous Application Nos. 24, 48, 49 of 2016
In
Original Application No. 123 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Jawad Rahim, Hon'ble Mr. Justice Sonam Phintso Wangdi, Hon'ble Dr. D.K. Agrawal, Hon'ble Mr. B.S. Sajwan
Keywords: Mining, EC
Decision: Disposed
Date: 4 May 2016

JUDGMENT

The present applications were filed following detailed judgment and orders passed by the Hon'ble Tribunal in the matter of Himmat Singh Shekhawat v. State of Rajasthan wherein the existing mining lease holders were directed to comply with the requirements of obtaining EC from the Competent Authority within the stipulated time as directed in the judgment. The Madhya Pradesh SEIAA was directed in an earlier order to dispose of all applications before it by 31st December, 2015, giving the applicants 2 weeks to file all the documents. The tribunal took the view that applicants as well as authorities took advantage of the order, and therefore mining activity was continued even though the applications were not disposed of. Further, the tribunal took note of the fact that some applications were for extension of time while others were for clarification to the effect that mining activity can be carried on even without grant of EC. The issue under consideration in the present applications was a circular issued by the State of MP on

14.12.2015 which stated that all those who have moved their EC applications prior to 31st December, 2015 would be dealt with immediately further permitting the mine owners to operate their mines if their application was errorless.

The tribunal held that the circular of the State of MP as per which applicants were allowed to continue mining activity pending decision on their EC applications was contrary to laws in force and the order of the tribunal, as it had been categorically stated that no mining activity could go on without ECs. This rule was in operation as otherwise the SEIAA and other authorities would not decide the applications pending for a long time, and unregulated mining would continue rampantly. Applying the precautionary principle, the tribunal held that the authorities had an obligation to enforce the law to prevent environmental degradation, and therefore the order of the State of M.P was quashed. The Tribunal as a last opportunity directed the district level authorities, DEIAA and DEAC to deal with all the pending applications till 31st of May 2016 and to shut down the units which failed to submit their applications prior to 31st March, 2016. Thereby the applications were disposed.

Gauri Maulekhi

v.

Union of India & Ors

Original Application No. 486 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Dr. D.K. Agrawal, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Ranjan Chatterjee
Keywords: Effluent discharge, River pollution, Fly ash dumping, Compensation, Restoration
Decision: Allowed
Date: 4 May 2016

JUDGMENT

The applicant, Member Secretary of "People for Animals for Uttarakhand" filed the application seeking restraints on the respondent paper industry to prevent the discharge of toxic effluents without treatment and disposing waste in forest and revenue areas. It was the case of the applicant that huge flow of untreated effluents was being flushed into the local stream joining the Gola river, and that solid hazardous waste was being dumped on the open ground, leading to pollution in the environment. It was further argued by the applicant that despite several newspaper reports regarding hazardous waste in the open and complaint filed with the local police station with respect to dumping of fly ash by the said respondent, no steps were taken by the concerned authorities. The applicant also brought into notice of the Tribunal that the toxic chemical waste which was ultimately flowing into the river was causing severe ailments to human habitation.

On the other hand, it was the case of the respondent that all measures had been taken for implementation of Charter for Water Recycling and Pollution Prevention in Pulp and Paper Industries of the Ganga River Basin as per guidelines of the CPCB, and an effluent treatment plant had been installed. The Uttarakhand Pollution Control Board ("UKEPPCB") stated that the monitoring of the industry had been done timely wherein the ground water quality was found to be within limits. The CPCB, stated that its role was limited to coordinate the activities of the State Boards/provide technical assistance, whereas powers had been delegated to the State Boards to grant consent and monitor industrial units. The private respondent argued that the application had been filed beyond the limitation period and was barred by the doctrine of res judicata referring to the closure of the FIR matter lodged with the local police station. It further countered the application dismissing all claims of untreated toxic discharge and stated that it had adhered to all conditions of the EC dated 21.03.2011 and consent orders issued time to time by the Board. The Tribunal noticed that the industry was found to be at default in 2011 with respect to its three ETP's. The Tribunal keeping into consideration the

operations of the unit directed for a joint inspection team consisting of officials of MoEF, CPCB, State PCB and nominee of IIT Roorkee.

The questions before the tribunal therefore, were first, whether the application was barred by limitation, second, whether the project proponent contributed to environment pollution, and third, whether compensation was owed by the project proponent/remedial measures had to be taken. With regard to the first point, the tribunal found the application to be within the limitation period as the application was filed for compensation for victims of pollution and restoration of the environment under section 15 i.e within five years from the date when dumping of fly ash was observed. Further the fact that toxic stinking water was released in the nala/local stream making the people victim to the same establish that the industry was causing pollution. It further stated that the doctrine of res judicata was not applicable, as the issues were not heard/finally decided in the previous criminal proceedings.

With regard to the second and third issues, the tribunal took cognizance of the report of the Joint Inspection Committee, as per which treated effluents were being discharged into Nallas which finally met the Gola River, showing significant pollution levels. It was also noted that the industry had a poor record of pollution control prior to the year 2011. The Tribunal also took note of the surprise inspection of CPCB in May, 2015 wherein the treated effluents were not found meeting the standards. However, the respondent challenged the results of the report on the grounds that they were inadmissible as evidence in legal proceedings, as proper procedure was not followed and no representative of the industry was called during the collection of samples when a surprise inspection was conducted. The tribunal concluded that the procedure under Section 11 of the Environment (Protection) Act, 1986 and the analogous Section 21 of the Water Act had to have been complied with, but there was no evidence to that effect, and therefore no conclusions could be drawn concerning the samples collected during surprise inspection. However, relying upon the joint inspection report, the tribunal observed that the effluent discharge by the industry caused pollution in the Paha nalla. However, no concrete evidence could establish fly ash dumping by the industry. Also, no instances of ailments caused by the industry were noted by the Tribunal.

Having said that the tribunal held that it was undisputed that some degree of environmental pollution had been caused by the industry, and the exact degree was immaterial while deciding the liability of a polluter. Therefore, considering the period of industrial activity and the volume of daily effluent generated, the industry was directed to pay damages of Rs. 30 lakhs for restoration of the area. Further, the tribunal constituted a Committee to ascertain the environmental degradation caused to Gola river and suggest remedial measures for its restoration within three months. The industry was directed to comply with the recommendations of the Joint Inspection Team and was also asked to pay costs of Rs 3 lakhs to the applicant.

The application was disposed of accordingly.

T.N Godavarman
v.
Union of India & Ors
And
Bali Ram Singh
v.
State of U.P & Ors

M.A No. 1166,1169 & 1164 of 2015 in W.P No. 202 of 1995
And
O.A. No. 494/2015 (PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Dr. D.K. Agrawal, Hon'ble Mr. Prof. A.R. Yousuf
Keywords: Forest Conservation, Mining, NPV
Decision: Allowed
Date: 4 May 2016

JUDGMENT

The matter was heard by the NGT upon transfer from the Supreme Court.

The dispute in the present case was with respect to the mining lands of the respondent company, M/s Jai Prakash Associates Ltd ["M/s JAL"] in village Kota and Obra which were used/leased out to the respondent for lime stone and marble mining. These lands originally belonged to the Uttar Pradesh State Cement Corporation Ltd ["UPCCL"] but the same were sold to the respondent company through a public auction in view of the directions of the Allahabad High Court in 2006 which had also allowed renewal of mining leases in favour of the respondent.

The issue under consideration was that against the said lands, notification under section 4 of the Indian Forest Act, 1927 ["Forest Act"] had been issued for declaration of the said lands as "Reserved Forests". In addition to the same, part of the mining leases were also included in the Kaimoor Wildlife Sanctuary under notification issued under section 18 (1) of the Wildlife Protection Act, 1972 ["WPA']. However, these lands were excluded from being notified as "Reserve Forests" under section 20 of the Forest Act.

The factual matrix of the matter is as follows:

The Supreme Court in Banwasi Seva Ashram vs State of UP & Ors, Writ Petition (Crim) No. 1061 of 1982, dealt with the areas in question and directed the State to initiate proceedings under section 4 including settlement of claims vide its judgment dated 20th November, 1986. Pursuant to the said directions, the settlement proceedings took place which also included the lands of the respondent company (then under the ownership of

UPCCL). However, the settlement of claims in respect of 12 villages remained. Thus, vide order dated 18th July 1994, the Supreme Court directed for completion of the settlement of proceeding in respect of those remaining villages and closed the proceedings of the matter giving liberty to the affected parties to approach the Supreme Court in case any directions were required. However, the Forest Settlement Officer in the year 2008 while determining the claims, also entertained the claims of the respondent company (which were already settled till 1994) and decided to exclude the said lands from section 4 notification.

The CEC filed its recommendation in the matter stating that the FSO should not had entertained such claims since the proceedings against the said lands were already completed till 1994 and had attained finality. It therefore recommended that the decision of the FSO excluding the lands notified under section 4 be set aside and the same shall be included in the Reserve Forest and the renewal/transfer of mining lease in favour of M/s Jal to be allowed only after prior approval under section 2 of the Forest (Conservation) Act, 1980 ["FCA"]and further permission of the Supreme Court must be obtained in respect of mining leases falling within the Kaimur Wildlife Sanctuary. It was further recommended that the lands notified under section 4 must not be allowed for non-forestry purposes and any permission for grant or renewal of mining lease must be immediately stopped. Further, the lands which were originally decided to be constituted as Reserve Forest must be included in the notification issued under section 20 of the Forest Act.

In 2009, the State of UP moved an IA No. 2469 of 2009 in WP (C) No. 202 of 1995 [MA No. 1166 of 2015] praying that it should be permitted to renew the mining leases as the lands suitable for mining purpose fall under the category of non forest land and to confirm the notification issued under section 20 which had excluded the lands of the respondent on the basis of the orders of the Forest Settlement Officer. The argument of the State was that the lands in question were used for mining purposes and did not fall under the definition of forest and were therefore kept out of the purview of reserve forest under the notification of section 20. It was further contended by the State that section 4 cannot be read in isolation and if lands covered under section 4 are proved to be non forest and the same conclusion is drawn by the Forest Settlement Officer after receiving claims by the affected persons under section 6, the same can be excluded from section 20 notification under the Forest Act.

However, the State of UP subsequently changed its stand in 2015 and filed an affidavit before the Supreme Court praying that the IA filed earlier seeking renew of the mining leases must be disposed of in view of the recommendations of the CEC and stated that the matter was reviewed by the State and it was found that the process of settlement of rights in respect of the lands had already taken place in view of the directions passed by the Supreme Court in Banwasi Sewa Asharam case in 1986 and had attained finality. Thus, the decision of the FSO excluding the said lands from section 4 notification in the year 2008 on the basis of the claims made by M/s JAL was bad in law and without any

jurisdiction. It was further informed that the lands in question had good forest density and the exclusion of the same have resulted into loss of large part of forest land accrued to Rs 409 crores as per the audit report of March, 2012. The affidavit filed by the State came to be numbered as IA 3877 of 2015 [MA No. 1169 of 2015].

In 2011, a complaint was filed by the applicant (numbered as OA No. 494 of 2015) with the PMO against the respondent company for illegal exclusion of forest area and carrying out unauthorised construction of cement plant, mining and non-forest activities in the said forest area. The MoEF acted upon the said complaint and passed various directions to stop the construction and stay the non-forestry activities however no effective steps were taken by the Forest Department. In response to the said complaint, the respondent company contended that they had obtained EC for the said factory under the EIA Notification, 2006 however since the project was within 10 kms of the Sanctuary, the approval of the NBWL was awaited. It was further argued by the respondent that the lands in question were freehold property and did not involve any forest. IA No 2939 of 2010 [MA No. 1164 of 2015] was also moved by the respondent company seeking renewal/transfer of the mining leases in terms of the orders of the Allahabad High Court.

In all these proceedings, the case of the respondent company had been that once the disputed lands were excluded from section 4 notification, claims settled under section 6 and final notification under section 20 was issued, section 2 of the FCA would lose its applicability over the said lands and hence prior approval of the Central Government would not be required in such case. It was further argued that the FSO/ADJ were competent to decide the claims of the respondent company in view of section 9 as the final notification under section 20 was not issued. Thus, the recommendations made by the CEC were sought to be unacceptable. The respondent further submitted that they would not raise any claim in respect of the disputed lands which were part of the Sanctuary area.

The Amicus Curiae supported the recommendations of the CEC and argued that the lands notified under section 4 would be covered under section 2 of the FC Act mandating prior approval of the Central Government. It was further argued that though the notification under section 20 was not published, the same was approved and therefore the FSO/ADJ could not have entertained the claim of the respondent company thereby passing orders for exclusion of the disputed lands. It was further clarified that the recommendation of the CEC was not against the grant of mining leases but was for prior approval of the Central Government and payment of NPV in terms of the provisions of the FCA. It was also submitted that the word “forest” must be interpreted in view of the order of the Supreme Court dated 12.12.1996 in T.N Godavarman Thirumulpad Vs. Union of India, [(1997) 2 SCC 267].

After hearing the contentions of all the parties, three issues were framed by the Tribunal: Effect of the declaration issued under section 4 when no notification under section 20 was published, applicability of section 2 of the FC Act on lands notified under section 4 but not declared as Reserve Forest under section 20 and effect of the orders of FSO/ADJ

excluding the said lands after completion of the settlement proceedings in terms of the orders of the Supreme Court.

The Tribunal observed that as per the definition of forest interpreted by the Supreme Court, not only reserve forest or protected forest but any area recorded as forest in the Government records irrespective of the ownership would be covered under section 2 of the Forest Act. Thus, even though the lands were excluded from section 4 notification, the same continues to be "forest lands" and therefore section 2 would be applicable. The Tribunal also placed reliance upon the orders of the Supreme Court in Banwasi Sewa Ashram Case where it held that the lands notified under section 4 would also come within the purview of section 2 and therefore the NTPC would have to obtain appropriate clearance for its power plant.

The Tribunal held, that the orders passed by the FSO/ADJ regarding settlement of claims in respect of the disputed lands, pursuant to the directions passed by the Supreme Court vide judgment dated 20 November, 1986, became confirm and binding. Thus, in case if the orders were incorrect or not passed with due consideration of facts and law, the only remedy left with the respondent company was to challenge the said orders before the appropriate authority and not to file a separate and independent claim before the FSO. Thus, the order of the FSO excluding the lands from section 4 notification in favour of M/s Jal subsequent to the finalisation of the settlement proceedings were found to be bad in law, invalid and void.

The Tribunal held that the lands covered under section 4 would be treated as "forest land" under section 2 and therefore would require prior approval from the Central Government. The Tribunal placed reliance upon the judgment passed by the Supreme Court in Ambica Quarry Works Vs. State of Gujarat ((1987) 1 SCC 213) and various other judgments and negated the contention of the respondent company that since the lands have been given for mining purposes to UPCCL prior to the coming into force of FC Act, the same would not be a forest land nor section 2 would apply.

The Tribunal therefore held that for renewal of the mining leases, prior approval of the Central Government would be required alongwith payment of NPV and other payments warranted under law and in respect of the leases within the Wildlife Sanctuary, permission of the Supreme Court and National Board for Wildlife would have to be taken by the company. The State Government was directed to cancel all non-forestry activities including mining on section 4 notified lands against which settlement proceedings were completed ad finalised in view of the judgment of the Supreme Court dated 20 November, 1986 and not to undertake any such activity on the said lands without prior approval of the Supreme Court and to immediately publish section 20 notification in respect of such lands. Further it called for action against the officers for not publishing section 20 notification and preventing implementation of Supreme Court directions.

With the said directions, the matter was finally disposed.

Joydeep Mukherjee & Ors
Vs.
Chief Secretary, Govt. of West Bengal & Ors.
Original Application No. 31/2014 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Water Pollution, Air Pollution, Noise Pollution, Effluent Discharge
Decision: Disposed
Date: 05 May 2016

JUDGMENT

This application was filed against the Respondent steel factory for causing pollution by discharging its untreated waste water into a local pond which was used by the residents for domestic purposes and at the same time was also rendering the land uncultivable causing threat to the livelihood of the people. The applicant also submitted that the smoke emitted from the factory was contributing to the air pollution, thereby making it hazardous for the local people living near the factory. According to the applicant, the same was in violation of section 24(1) and section 22 of the Water and Air Act respectively. Other claims involved excess noise pollution caused due to the factory machines, attracting provisions of the Noise Pollution Rules, 2002.

The Respondents refuted all material allegations, submitting that their factory was working in compliance with all requisite rules and regulations, along with a valid factory license and proper installation of air, smoke and dust control systems approved by the State Pollution Control Board. In submitting the above, the Respondents denied all allegations of violating provisions of the relevant laws.

On the direction of the Tribunal, a status report was filed by the State Pollution Control Board which clarified the position of the respondent factory of not discharging any waste water into the pond and its absolute compliance with the standard prescribed for emission of stack and effluent discharge and that the unit possessed valid consent to operate. However, since the said status report was objected by the applicants, the Tribunal directed for another inspection by the Central Pollution Control Board which made certain recommendations further clarifying that the water was being used by the factory for its domestic consumption.

Placing reliance upon the reports of the State and Central Pollution Control Board, the Tribunal rejected the allegations of the applicants. However, it directed the Respondents to comply with the recommendations made by the Central Pollution Control Board which included the installation of more suction point hoods to minimize emissions, a separate energy meter, maintenance of logbook, installing a water discharge-measuring device and improvement of housekeeping, within a period of three months followed with a

compliance report by the State and Central Pollution Control Board. Accordingly, the application was disposed of, without costs.

Human Rights & Consumer Protection Cell
v.
State of Telangana & Ors
Application No.120/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: NA
Decision: Dismissed
Date: 6 May, 2016

JUDGMENT

In this application, the respondent filed a Status Report which stated that the constructional activities taken up by the plot purchasers of the unit under dispute had been stopped and instructions had been issued to the field level functionaries to closely watch over the scheduled land.

From the Status Report, it was also observed that debris had not been removed completely, even though demolitions had taken place. The Panchayat Secretary, the 4th respondent further submitted that the planning permission issued to the respondents had been duly cancelled, to which the Tribunal directed the occupants to work out a remedy if any of them had not been served with such copy.

In view of the above said position, the application was closed.

Mr. P. Bakthavatsalam
v.
The Commissioner, Corporation of Chennai & Ors
Application No.85/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Tree Cutting
Decision: Allowed
Date:6 May, 2016

JUDGMENT

This application was filed before the Tribunal seeking for a permanent injunction restraining Respondents 3-11 from cutting the remaining branches of the 100-year-old "Arasamaram" tree located adjacent to a temple in Perambur, Chennai. It was filed following an ongoing dispute between the applicant and the people maintaining the temple who stated that the temple was built on a patta land, as opposed to on encroached land, contrary to the applicant's allegation of them having encroached the public land and unlawfully building the temple. The applicant relied on the High Court judgment where it was found that action should be taking against both parties, after which the officer of the Corporation of Chennai submitted that a notice for locking and sealing the premises had been issued to both parties but no action could be taken due to the ongoing elections.

Subsequently, the Tribunal directed the Corporation to pass any order as was required in law against the parties and to the respondents to not cut any portion of the tree, including the remaining branches, under any circumstances.

In view of the above direction, the application was disposed of.

M/s. Sonal Process
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Anr.
M.A. No. 64/2016 in Application No. 31/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Compliance
Decision: Allowed
Date: 6th May 2016

JUDGMENT

This application was filed seeking for a direction to the 1st respondent, the State Pollution Control Board, to comply with the order passed by the Tribunal, which directed the State Pollution Control Board to consider the representation of the applicant and pass appropriate orders within 2 weeks after making inspection, subject to the conditions that the applicant should carry on the activities with only 96 KLD.

Following these orders, the Board confirmed that it had directed restoration of the electric power supply for a period of one year. In view of the same, the Miscellaneous Application was disposed of.

Biswanath Maji & Anr
Vs.
Pollution Control Board of West Bengal & Ors
Original Application No. 35/2014 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Water Pollution, Compensation, Health hazards
Decision: Disposed
Date: 06 May 2016

JUDGMENT

This application was filed against the setting up of a blast furnace by IISCO at its plant located in Namopara village of district Burdwan in West Bengal. The contention of the applicants was that since the village is surrounded by a 30 ft. high slag bank of the plant and being located at lower level, the waste water coming from the project premises had led to contamination of the water bodies. They also submitted that the project proponents had not implemented any scheme for proper water disposal through underground system, thereby, not abiding by the rules determined in the meeting between the management and the villagers during the establishment of the plant in the year 1981. A mass representation was also sent by the villagers in the year 2009 to the Govt of West Bengal highlighting the health hazards caused by the plant. The applicants who belong to the said village also claimed payment of compensation to the kith and kin of 8 deceased persons who died from various diseases allegedly caused by environmental pollution from the plant.

The Respondents submitted that they had obtained all statutory clearances as required under law and the wastewater was discharged to the Damodar river and alleged that the village in question was located outside the project boundary and no water was discharged in the area from the project site.

However, a report prepared by the pollution control board revealed the deficiencies in terms of proper treatment of wastewater, non-commissioning of automatic air quality monitoring system, inadequate plantation, absence of permanent water sprinkling arrangements etc. It was also observed that due to improper performance of the effluent treatment plant, the phenol level in the treated effluent was found to be very high for which a bank guarantee of Rs 10 lakhs was executed by the project proponent. However, it was argued by the Respondents that the said deficiencies were rectified subsequently. In course of the proceedings, it was also brought to the notice of the Tribunal that a Writ Petition No. 27193 of 2006 was filed before the High Court of Calcutta for enhanced compensation, employment and rehabilitation by those whose land was acquired for the project. However, no issue with respect to environmental pollution was raised by the villagers.

Consequently, the Tribunal relying upon the fresh inspection conducted by the Pollution Control Board, found that the unit had met the deficiencies pointed out earlier, wherein they had obtained a valid consent to operate, built a plantation around the project site, completed an internal road and installed effluent monitoring parameters and automatic ambient air quality monitoring stations. The project proponent also undertook to construct a garland drain outside the premises of the unit ensuring that no run off water from the premises gets discharged in the village. It further undertook to do plantation in the area. The Tribunal directed for the same to be done within a span of six months.

After considering the pleadings, the Tribunal concluded that the main problem at present was the rehabilitation as opposed to environmental pollution since according to the applicants the area was no more conducive for a healthy living due to industrial activities. The Tribunal further indicated that the unit with such a high pollution potential requires constant monitoring and timely action by the Pollution Control Board but at the same time considering the fact that the plant may cause environmental degradation due to unscientific disposal of wastes in future, it showed its desire to rehabilitate the villagers elsewhere after acquisition of the village land and payment of compensation to the villagers by the respondent plant. However, it refrained itself from issuing any directions with respect to acquisition, compensation and rehabilitation holding that the same does not fall within the purview of the NGT Act.

Accordingly, the application was dismissed without costs.

Kayalpatnam Environmental Protection Association
v.
Union of India & Ors
Review Application No.03/2016 in Appeal No. 37/2014 (SZ)

Coram: Hon'ble Justice M. Chockalingam, Hon'ble Shri P.S. Rao
Keywords: Review
Decision: Dismissed
Date: 9 May, 2016

JUDGMENT

The appeal was filed challenging the Environmental Clearance granted to the 2nd Respondent, Dharangadhara Chemical Works to construct a new chlorinated PVC Plant and expansion of the production capacity of existing units. However, the same was dismissed by the Tribunal vide order dated 15.02.2016.

The appellant (review applicant), aggrieved by the said order of dismissal, filed this review application, in which the Tribunal found no new points worth of review. It also stated that the main ground that the 5th respondent was not accredited, fails for the reason that the NABET has approved the accreditation application in which the 5th respondent is found to be an approved consultant for preparing EIA report for category A Project, the court also found substantial compliance.

Therefore, for the lack of any error apparent on the face of the record, the review application was rejected.

Ratneshwar Prasad Singh
v.
Banka Municipality, Banka & Ors
Original Application No. 233 of 2015 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Domestic sewage/sludge, Municipal Solid waste, Jurisdiction
Decision: Dismissed
Date: 9 May, 2016

JUDGMENT

The application was filed against the construction of an open drain situated within the Banka municipality in Bihar and seeking reconstruction of a proper sewerage system for discharge of the domestic sewage from the houses of the local residents. The contention of the applicant was that the respondents have acted negligently and had constructed the drain at higher level which causes inundation of dirty water leading to health hazards in the locality. The applicant contented that the domestic sewage/sludge generated from the houses of the residents is Municipal Solid waste and the Municipality was under an obligation to collect, transport and dispose the same as per the Municipal Solid Waste (Management and Handling) Rules, 2000.

The question before the tribunal was whether any substantial question relating to environment as specified under Schedule I of the NGT Act, 2010 was involved in the present case. The contention of the respondent was that dispute over construction of drain was not a substantial question of environment under the NGT Act, but the same was covered under the Bihar Municipality Act, 2007. The tribunal recognized that in any event, it would have to be determined whether domestic sewage could be equated with Municipal Solid Waste. The tribunal found that the difference between the two lies in the manner it is carried/moved for treatment and disposal, i.e. sewage is what flows in open or closed sewer and not in a vehicle. The Tribunal concluded that the municipal solid waste is a distinct substance vis-à-vis the domestic sewage/sludge. Further, the Tribunal also examined the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and concluded that the act regulates effluent quantity, quality and mode of its discharge and disposal but not regulates construction of drains/sewers meant for carrying sludge or sewage.

Thus, the tribunal held that change in construction of open drain meant to carry the domestic sewage from a particular locality is neither covered by the Environment (Protection) Act, 1986, nor the Water Act (1974), and therefore no issue arises out of the implementation of any of the enactments specified in Schedule I of the NGT Act, and the matter is covered by the municipal laws.

Thereby, the application was dismissed.

M.P Muhammed Kunhi
v.
MoEFCC & Ors
Appeal No. 36/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Sand Mining, Environment Clearance
Decision: Dismissed
Date: 10 May, 2016

JUDGMENT

This appeal was directed against the order of the State Environment Impact Assessment Authority ('SEIAA') granting Environmental Clearance to the District Collector (4th Respondent) for river sand minding in the Valapattanam River in Kannur District.

The applicant contended that after the enactment of the Kerala Protection of River Banks and Regulation of Sand Act, 2001, sand in Kerala was being removed manually by using country boats at an alarming rate, which started early morning and went on till midnight. Initially, the applicant filed a writ petition before the High Court, which was then transferred to the Tribunal and disposed off by recording the statement of the gram panchayat that no sand would be removed from below water level. However, when the applicant found that an Environment Clearance ('EC') had been granted by the SEIAA, it filed the present appeal. He also stated that the impugned order had been passed without any pre-feasibility report, Environmental Impact Assessment Report or Environment Management Plan from an accredited agency and had relied only on the Sand Audit Report of the Centre for Environment and Development, which was not an accredited agency. It was the case of the appellant that the District Collector had not proposed with any evidence that there was any river sand available above water level and that the sand was available only below 2m of the summer water level and no sand was available above water level for mining. In such circumstances, the grant of EC was in violation of the SC judgment in Deepak Kumar case which made it clear that the sand mining should be restricted to 3m water level. It was further stated that the proposed sand mining site fell within CRZ area and that the EC had been granted without a proper mining plan.

Therefore, the applicant challenged the EC on the ground that it was granted without proper application of mind, it was in violation of Article 21, it was in breach of a fundamental duty under Article 51A and that the Environment Impact Assessment ('EIA') Report and Management Plan had not been prepared and reliance was only place upon a sand audit report which was not valid.

According to the Tribunal, the point to be decided was whether the order of the SEIAA was valid in law or liable to be set aside. In the present appeal, the grievance of the appellant was that there was no sand available above summer water level and therefore,

the EC should have been rejected. However, there was nothing on record placed by the appellant to show that no sand was available above summer water level and if it was found by the appellant that any one was illegally excavating sand below water level, it was for such person to specifically make out a case and seek appropriate relief before the proper forum. In view of the same, the appeal failed and was dismissed.

Sashi Kumar B. Menon & Anr.
Vs.
The Commissioner of Police – Chennai City & Ors.
Application No. 11/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Building construction, Noise Pollution. Compensation
Decision: Disposed
Date: 10th May 2016

JUDGMENT

This application was filed by the applicant aggrieved by the activities of the M/s. Baashyam Constructions Pvt. Ltd. (5th respondent), due to which the wall of the applicant's property had developed cracks, which the applicant evidenced with photographs. However, the respondent submitted that such cracks couldn't be attributed to his activities and might be due to other reasons as the property of the applicant was located across the road and not adjacent to the construction activity of the respondent builder. However, he later submitted that without going into the demerits or merits of the case and as a gesture of goodwill, he was prepared to pay a sum of Rs.2 lakhs to the applicant.

Insofar as it related to the driven pile method, the respondent builder was not following the same although the piling work had been completed. Therefore, it was not found necessary to continue the application, even though the applicant submitted that the respondent should be directed to not carry on such works during night hours, which would disturb the neighbours. To this, the respondent submitted that by virtue of the Motor Vehicles Rules and the orders passed by the Commissioner of Police, he would only use the movement of lorries for the purpose of loading and unloading of the construction materials, without disturbing the neighbors or causing any noise pollution.

The Tribunal was of the view that this stand taken by the project proponent was fair and accordingly, the application was disposed of.

Kumbeswaran
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
M.A. No.66/2016
In
Application No.10/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Hot Mix Plants, Closure Order, Framing of Guidelines
Decision: Allowed
Date: 11 May, 2016

JUDGMENT

In an order passed by the Tribunal on 17.02.2016 in the original application, directions were given to the Board for closure of 7 hot mix plants, along with directions to frame necessary guidelines regarding the functioning of the plants. The current Miscellaneous Application was filed under S.26 of the NGT Act due to the alleged functioning of the 7 units during the night time, in violation of the closure order, seeking punishment for the offenders for disobeyance of the order.

In its reply, the Board contended that the units were actually closed and that the electricity supply had also been disconnected; it was also in the process of making the requisite guidelines. However, the Tribunal was of the view that in spite of the Board's denial of the running of the units, it should take all necessary steps to ensure the sealing of the premises, including the seizure of the diesel generator set from the said units. The Tribunal also clarified that the Board should monitor the functioning of the units during the day and night time and also complete the framing of the guidelines within 10 days after the completion of the proposed aerial survey.

With the above direction, the application was closed.

Asirvatham Nagar & GN Nagar Welfare
v.
The District Collector & Ors
Application No.12/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Renewal of Consent, Air Pollution
Decision: Dismissed
Date: 11 May, 2016

JUDGMENT

This application was file due to the air pollution caused due to the respondent's Tyre Retreading Unit, which involved burning of wood, melting parts of worn tyres, melting rubber etc. The applicant further stated that the consent given by the Pollution Control Board to run the unit had expired on 30.09.2015.

However, the respondent submitted that an application for the renewal of consent had been filed and that the State Pollution Control Board ('Board') had not taken any action in considering the same, to which the Board had filed a reply stating that the zone in which the unit was stated had been reclassified as a mixed residential zone, from a commercial zone.

The applicant contended that since the application filed for renewal of consent had not been disposed of the Board, it was not possible for the 4th respondent to take any appropriate measures for the purpose of compliance of various requirements that may be made by the Board. Considering this situation, the Tribunal disposed of the application with a direction to the Board to pass appropriate orders on the application filed by the respondent within 10 days from the date of receipt of the copy of this order, and such an order would be capable of challenge by the applicant according to law.

Dr. Gorge Joseph Themplangad
Vs.
Union of India & Ors.
Application No.433/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Waste, Railway Tracks
Decision: Dismissed
Date: 12th May 2016

JUDGMENT

Post filing of the application, it was observed that there was no representation on behalf of the applicant, who had also been consistently absent in many hearings. It was found that the Principal Bench of the Tribunal was seized of the matter relating to the maintenance of cleanliness and disposal of waste on the railway tracks throughout the country, the case of which was still pending.

In an order passed by the Bench, directions were given to the Railway Board to prepare guidelines for each railway zone to prepare a time bound action plan for their zone, within 4 weeks from the date of the order, which showed that the Principal Bench had taken measures to ensure that the area around the track were kept clean and there was proper maintenance of cleanliness.

In view of the above, the Tribunal found that there was no purpose in keeping the current application pending and accordingly, it was dismissed for non-prosecution.

Yasoraminfra Developers Pvt. Ltd.
v.
Kerala Coastal Zone Management Authority, Thiruvananthapuram & Anr.
Application No.35/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Backwaters, Environment Clearance, CRZ Clearance
Decision: Dismissed
Date: 12 May, 2016

JUDGMENT

The Application was filled by the applicant company challenging the order of the 1st respondent i.e., Kerala Coastal Zone Management Authority dated 19.12.2014 by which they refused to grant CRZ clearance to the applicant for the proposed flyover project over the Chilavannoor backwaters in Cochin, Kerala.

The factual matrix of the case is that the applicant had initially applied for prior EC for the project in the year 2007 and after the appraisal by the EAC and on consideration of its recommendations, the 2nd respondent-MoEFCC came to a conclusion to shift the same to the non CRZ area. In view of the same, the applicant changed the landing place and resubmitted the project report. However, the 2nd respondent directed that the project would be treated as a new project, thus, indicating all procedural formalities afresh. The said order was challenged by the applicant before the High Court which directed the applicant to submit revised proposal which they did in the prescribed Form - I to the 1st respondent taking into consideration that all the other authorities have cleared the project, except as regards the question of the place of landing at one end of the bridge. The CZMA challenged the said order in review as the Government of Kerala had not approved the said project but the same was disposed of with a direction to the authority to consider all the aspects including the opinion of the Government on the same. In the meanwhile CRZ Notification, 2011 came into force and the applicant was asked to file a fresh application in terms of the new regulations. However, the applicant was informed that the CRZ clearance was declined, since the project was not permissible as per the provisions of the CRZ Notification, 2011. It was against this order of refusal to grant CRZ, the applicant approached the Hon'ble Tribunal in the present application. The main contention of the applicant was that since it had applied/considered for approval under the provisions of the CRZ Notification, 1991 the same would be applicable to its case and not the subsequent regulations of 2011 and therefore the order of refusal must be set aside.

The Respondent authority in response submitted that the project was denied CRZ clearance as the project proposed certain constructions including construction of buildings, helipads etc. above backwaters in the CRZ Zone IV which was not permitted under the provisions of the CRZ Notification, 2011. It was further stated that the

permission issued by the Cochin Corporation was by overlooking the provisions of CRZ Notification, 1991 and there was no EC granted by MoEF & CC till that date. The project was also found to cause adverse environmental impact as it covered a major portion of the wetland. It was further stated that the original proposal was also rejected by the EAC/MoEFCC as the project was found to be impermissible under the previous Notification of 1991 since the same was commercial in nature which was not allowed to be constructed on sea links and bridges. It was further stated that para 3(ix) of the CRZ Notification, 2011 prohibits reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities and therefore the proposed project could not be accepted. The respondents argued that according to law, those project which were approved under the CRZ Notification, 1991 were not reopened however in the present case neither any approval under CRZ 1991 or 2011 was given nor any EC was granted under EIA regulation of 2006. Thus the application was stated to be not maintainable.

The Tribunal noted that the project was not granted any of the clearances. Though applicant had made a revised proposal but neither the same was approved by the CRZ authority or granted EC by the MoEFCC. The applicant had assumed that he had already obtained permission from all the authorities however mere obtaining of "consent" from the State Government and even recommendation of EAC did not imply that the project proponent had obtained all Clearances. The Tribunal further clarified that merely because the application filed under CRZ Notification, 1991 was in existence, there was no enabling provision under CRZ Notification, 2011 which provided that such pending applications were to be treated as applications filed under CRZ Notification, 2011.

Thus, the contention of the applicant that the order of refusal to grant CRZ must be set aside since the project was not considered under the CRZ Notification, 1991 was found to be unsustainable. The Tribunal noted that the constructions proposed by the applicant were prohibited under the CRZ, 2011. The Tribunal therefore dismissed the application finding no illegality in the impugned order.

Raghu Nath
Vs.
Hindustan Zinc Ltd. & Ors.
Application No. 128/2014

AND
Davad
Vs.
Hindustan Zinc Ltd. & Ors.
Original Application No.129/2014 (CZ)

Coram: Justice Mr. Dalip Singh, Dr. S.S. Garbyal
Keywords: Mining, Air Pollution, Water Pollution, Health Hazards
Decision: Disposed
Date: 12 May 2016

JUDGMENT

The applications were filed by two residents of village Bherukhera, Rajasthan alleging that mining activities being carried out by the Respondent, Hindustan Zinc Limited for excavation of lead, zinc and associated minerals at a close proximity from the village, the toxic dust of which, was in turn, resulting in severe air pollution and affecting the environment, including the crops, grass, animals and human beings. They also submitted that the tank and underground water too, were affected, leading to drying up of wells, lack of availability of clean drinking water leading to diseases and deaths and reduction in water levels. The applicants pointed out that such consequences were the result of non-compliance with environmental conditions and demanded compensation for the victims under section 15 of the NGT Act, 2010.

In the inspection report, the Respondents evidenced that as per the report of the Chief Medical Health Officer the level of respiratory disorders, skin diseases and other type of disease were not found to be beyond the average diseases prevalent in the area also pointing out that some of the victims themselves were smokers. It was also submitted that no personal details of the persons had been disclosed in the application leading to little or no findings on the issue of loss/compensation. In consideration of the issues raised by the applicants with regard to the increased levels of pollution, the Tribunal directed the Respondents to undertake maintenance steps and pointed out that CSR would need to be carried out continuously. For this, the Tribunal appointed the District Administration and the village Panchayat as in-charges to ensure the regular CSR activities included providing water sprinkling systems, water spray and plantation along the tail dam and roadside, construction of a Pakka road from the junction point to the village & construction of two separate toilets for boys and girls in the village school, an RO plant for drinking water and provision of additional computers, plantation of trees on

both sides of the road (at least 5000 trees) as it would act like wind breakers and prevent soil erosion and regular monitoring of Air Ambient Quality and drinking water quality and strengthening of primary health centres with focus on infrastructure and to take additional precautions for drinking water supply to local population, cattle and other animals.

The application was disposed of with liberty to the affected persons to independently raise their grievances for award of compensation under section 15 for any loss or damage incurred by them.

Mr. Maragathavalli
v.
The Tamil Nadu Pollution Control Board & Ors
Appeal No.34 and 35 of 2015
And
P.V.Ramalingam
v.
M.Maragathavalli & Ors.
Appeal No. 39 and 40 of 2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: NA
Decision: Dismissed
Date:13 May, 2016

JUDGMENT

In this application, the 3rd respondent i.e. M/s P.V.S Blue Metals was being run by Mr. P. V. Sivakumar, who passed away during the pendency of the appeal, after which no steps were taken by the appellants to implead the legal representative to represent the deceased. It was a well-settled fact that no appeals are allowed to continue against a respondent who has passed away, especially when relief is claimed against them.

Following the Supreme Court order wherein it was stated that if the legal representatives of the deceased are not impleaded in the suit in time, the appeal cannot survive. Therefore, the Tribunal dismissed the appeal.

Ravi Kumar & Anr.
Vs.
Tamil Nadu Pollution Control Board & Ors.
Appeal No. 126/2016
And
V.V.Chandran
v.
Tamil Nadu Pollution Control Board & Ors.
Appeal No. 127/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent
Decision: Dismissed
Date: 18th May 2016

JUDGMENT

This appeal was filed by small manufacturers of eatable materials against the impugned order of the Pollution Control Board, following which their units were closed and electricity supply was disconnected. This order was issued due to the alleged discharge of untreated water, used to wash potatoes, into the river Cooum.

The Board submitted that while it was true that an online application was made by the appellants and was subsequently registered, it was still awaiting particulars from the DEE. Accordingly, the DEE submitted that the Registration receipt filed by the appellants was only an initial stage for getting a password and user ID and necessary particulars of the appellants were required to process the said application.

Therefore, the Tribunal directed the appellants to make an appropriate application by using the already registered User ID and password and further directed the Board to consider the same, on merits and in accordance with law. Subsequently, the appeal was dismissed, with directions to the Board to recall the closure order once consent was granted to the appellants.

M/s. Madha Galvanising
v.
The Chairman, Tamil Nadu Pollution Control Board & Anr.
Appeal No.41/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: NA
Decision: Dismissed
Date: 23 May, 2016

JUDGMENT

This Appeal was directed against the impugned order of the State Pollution Control Board dated 12.01.2016 by which the Board had ordered closure and disconnection of power supply in respect of the appellant's unit which was carrying on electroplating and galvanizing activities for the past 5 years.

The said order was based on a personal hearing conducted in respect of aforesaid activities of the appellant unit. Upon inspection, it was found that the unit was in operation without conforming to the pollution control norms and had not provided ETP for the treatment and disposal of trade effluent and not taken APC measures for the fumes generated during electroplating operation.

There was no appearance on behalf of the appellant. The Board submitted that the appellant had vacated the premises and therefore, nothing survived in the appeal.

Accordingly, the appeal was disposed of.

M/s. R.R. Drinking Water
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Diary No. 278/2016 in R.A. (Unnumbered) in
Application No. 224/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Condonation of Delay, Review Application
Decision: Disposed
Date: 24th May 2016

JUDGMENT

This application was filed for the purpose of condonation of delay of 45 days in filing a review application against the final judgment passed in a batch of cases pertaining to packaged drinking water unit, which was initially taken up Suo Motu in OA No. 40 of 2013. The Tribunal noted that the application was not maintainable as the Tribunal do not have powers to condone delay in a review under the NGT Act and Rules.

Noting the same, the Tribunal directed the State Pollution Control Board to find out whether there was any technical error in categorizing the applicant's unit in Category 1, thereby ordering the units to stop carrying out any activities and closing them.

Subsequently it was found that the said units were entitled to have electricity supply for the protection of membrane and maintenance of machinery. The Tribunal noted that due to a clerical mistake in a previous order dated 29.01.2016 the unit was categorized as 'Category 1'. Accordingly, the application was disposed and the applicant unit was eligible to be categorized under Category 2, which meant that it would be permitted to operate, to protect the membrane and to maintain the machinery and to that extent the electricity supply shall be provided.

Suo Motu
Based on the News item dated 31st July, 2013 in "The Indian Express"
Vs.
Secretary to Government, Ministry of Environment and Forest and Climate Change & Ors.
Application No.180/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Ecological Balance, Ecological Sensitive Area, Encroachment, Waste Dumping
Decision: Disposed
Date: 24th May 2016

JUDGMENT

This application was filed following an attempt made by certain encroachers to destroy ecological balance in the Kovalam estuary, an ecologically sensitive area. The Tribunal took up this matter Suo Motu based on a report published in the Indian Express after which notices were issued to various official respondents.

In the report of the District Collector, it has been stated that nearly 50 cents of poramboke land had been encroached and a compound wall had been built which had blocked the water flow of the Buckingham canal from one end to another. Later, it was stated that the said wall had been demolished fully and there was no obstruction to the free flow of water. Severe follow up actions and monitoring had been taken up to prevent dumping of the waste into the Canal.

In view of the said statement made by the District Collector, the application was disposed of with directions to continuously monitor the area and ensure that no encroachment takes place upon the water body in any manner.

Madhu Sharan & Ors
v.
Noida Authority & Ors
Original Application No. 500 of 2015 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Noise Pollution, Traffic congestion
Decision: Allowed
Date: 24 May 2016

JUDGEMENT

The members of the Resident's Welfare Association alongwith the other residents of Sector 50, Noida moved this application, seeking directions to the Noida Authortiy and UP Pollution Control Board to take immediate action to prevent commercial vehicles from entering through a 12 mts wide road infront of their houses since the same led to heavy traffic congestion and immense noise pollution in the area. They added that only vehicles belonging to residents should be permitted to enter through the said lane and all commercial vehicles including the school buses of the local public school located in the vicinity should be re-routed, thereby seeking exclusive use of the lane by local residents. The Respondents resisted the application, leading the applicants to give up their prayers regarding re-routing of school buses and other vehicles as well as praying instead for making the said lane a one-way lane for the traffic.

It was contended by the respondents that the said road is a public road and cannot be restrained for personal use of the residents only. It was further alleged that much of the traffic congestion was due to the encroachments made by the residents by way parking, creation of kitchen gardens and installation of DG sets which requires to be removed in order to facilitate smooth vehicular traffic along the lane. Further, the plea of the applicants that the traffic be diverted to another road at 50 mts is unreasonable and would lead to heavy congestion on the said road. The respondents, however, submitted that declaring the said lane a 'No parking Zone' and enforcing 'Silence Zone' within 100 mts of the school will ease out the problem of traffic congestion and noise pollution in the said area. Upon examination of reports indicating levels of noise pollution, the Tribunal agreed to call for intervention, pointing out that making a one-way lane would lead to traffic congestion on other roads, thereby aggravating the problem of environmental pollution. Thus, considering the mechanisms to regulate ambient air quality specified under the Noise Pollution (Regulation and Control) Rules, 2000, the Tribunal declared the said lane as a No Parking Zone and vicinity within 100 mts from the local school as a silence zone, the concerned authorities were directed to take action against public violating the parking rules, remove all encroachments standing on the lane and ensure strict compliance of the noise rules.

Accordingly, the application was disposed with no order as to costs.

Aswini Kumar Dhal
Vs.
Odisha Pollution Control Board & Ors
Original Application No. 41/2015 (EZ)

Coram: Hon'ble Justice S.P Wangdi, Dr. P.C.Mishra
Keywords: Water Pollution, Air Pollution, Health Hazards, Compensation, Polluter Pays Principle.
Decision: Disposed
Date: 25th May 2016

JUDGMENT

This application was filed for directing appropriate action against the 3rd respondent, the Station Master of Jhakhapura railway station, Jajpur district of Odisha and the General Manager of the East Coast Railway Division for illegally operating a Railway Siding/Stack Yard in the station for storage and transportation of raw materials such as coal, iron ore and dolomite. The applicant contended that the aforementioned operations/activities were being carried out without proper pollution control system in place resultantly causing severe air and water pollution in the locality, leading to loss of primary productivity and severely affecting the health and economy of the village people. Further directions were sought against the General Manager of VISA Steel (Respondents no.5) for contributing significant coal and iron ore dusts to the village environment by transporting the raw materials in uncovered vehicles.

It was revealed under RTI that the East Coast Railway had been carrying out the activity of loading and unloading of raw materials at the site in question which was supplied to the industrial units established in the Kalinga Nagar Industrial Area without obtaining the consent of the SPCB. In the reply, the SPCB submitted that the aforementioned activities came under the "Red Category" due to its considerable air pollution potential, which made it necessary for the respondents to have obtained consent to operate and consent to establish. The SPCB had issued notice to the Respondent No. 3 to stop the illegal activities till such consents were obtained under section 33A and 31A of the Water and Air Act, respectively. After subsequent inspections when no compliance was made, the railways was issued a closure notice. However, the same was withdrawn later by SPCB inspite the fact that the railways did not obtain the required consents.

The respondents strongly resisted the application on the ground that the case of transportation of raw materials without cover has already been dealt with under the Motor Vehicles Act 1988 and thus this application was not maintainable. The Respondent No. 5 contended that it had obtained all the required licenses and clearances and that the appellant had vested interests in instituting the case and had himself been indulging in illegal activities in and around the disputed area. Further, it was stated that the raw

materials carried by the vehicles were covered with tarpaulin to avoid spilling and emission.

The Tribunal held that the fundamental question that required determination of the case was whether the Jakhpura Railway Station, East Coast Railway, would fall in the purview of consent domain under the Air and Water Act and considering the pleadings contained in the OA, the question appeared to have been answered in the affirmative. These acts vested the Board with the power to issue directions for complete restriction of such activity if carried out without consents of the Board. The Tribunal also considered the directions passed by the High Court of Odisha in W.P (C) No. 21867 of 2010 which mandated requirement of consents for the railway sidings even if the same was owned and controlled by the railway authorities.

The Tribunal observed that the sequence of the events where repeated show cause notices were issued but no compliance was made by the Respondent railway indicated the indifference of the railway authorities and their deliberate defiance of the laws and also the disdain with which they treated the statutory authorities. Herein, after the guidelines were revised by the PCB in 2010 whereby the railway activities fell under the purview of consent management, the East Coast Railway ought to have applied for consent from the Board immediately but it was only after representations were submitted by the local people of Jakhapura to various authorities about the severe pollution that the Board wrote to the railway directing them to obtain consent from PCB.

Having discussed on the facts and circumstances in detail, the Tribunal was of the considered view that the East Coast Railway was undeniably guilty of violation of the statutory provisions particularly the Water Act, 1974 and Air Act, 1981 for not obtaining mandatory consents under the same,, that the District Magistrate had misused his power to allow loading and transportation of raw material at the railway siding without consent from the Board, that the Chairman and Member Secretary of the Board had not functioned in accordance with the power vested on them under the Air and Water Act in revoking the closure order. For these reasons, the Tribunal passed directions to the Govt. of Odisha to seek explanation from the DM for his misconduct and take suitable penal action against him, to constitute a Committee to inquire into the action of the Board in revoking the closure order. The Tribunal did not observe any violation on behalf of Respondent No. 5 in undertaking transportation of raw materials.

With regard to the breach by the Railway for operating without consents and severely polluting the surrounding environment, the Tribunal invoked the Polluter Pays Principle, making the Railway liable to pay environmental compensation amounting to Rupees 50 lakhs to be used on infrastructure development of Primary Health Care at Jakhpura and towards improving the environment in and around the railway siding. Directions were also given to pay the litigation costs to the applicant amounting to Rs 1 lakh. The railway siding was directed to remain closed till consent to operate was granted by the Board.

With the above directions, the application was disposed.

A.Iyappan
v.
The Secretary, MoEFCC & Ors
Application No.211/2015

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Olive Ridley Turtles, CRZ-I
Decision: Dismissed
Date:26 May, 2016

JUDGMENT

This application was filed seeking a permanent injunction against respondents 5-7 from undertaking any construction activity in Survey No.141 of 76 in Kancheepuram District. The applicant contended that the distanced between the proposed construction site and the Olive Ridley Turtle Nesting Ground was about 10 meters and was located in an ecologically sensitive area, thereby coming under CRZ-1 as per the CRZ Notification, 2011. Further, the applicant stated that even if it was taken as stated in Clause 3 under the Notification wherein setting up of new industries and expansion of existing industries was prohibited, except those directly related to water from or needing foreshore facilities, it could only be read along with the permissible activities provided the same was notified as contained under Clause 8.

However, as on the date of the application, there was no proposal of any construction to which the 1st respondent submitted that even though no application had been received during the time of filing the reply, there had been an application for the purpose of establishing a Coastal Police State, which was under construction; however, no construction activity was going on.

The Tribunal clarified that in the event of the authority taking a decision in accordance with the notification of either permitting or not permitting the activity, he should issue a copy of such proceedings to the applicant to enable him to work out his remedy. Accordingly, the application was disposed of.

G. Raveendran
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No.25/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Stone Quarrying, EC
Decision: Dismissed
Date: 26th May 2016

JUDGMENT

This application was filed to shut down the operations of a stone quarry unit carried on by the 6th respondent in Salem District, without obtaining requisite permission from the concerned authorities and to cancel the lease granted in the disputed survey number, which was in operation as on the date of the application.

The respondent thereafter produced an order of Environmental Clearance granted by the SEIAA in respect of the said survey number, permitting the validity of the lease period. In view of the fact that the respondent had been granted the EC, the prayer in the application did not survive and in the above terms, the application was disposed of.

M/s. Ganapathi Raja Processors
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application No.120/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: CETP, Pollution
Decision: Dismissed
Date: 26th May 2016

JUDGMENT

This application was filed by one of the member units of Karaipudur CETP for a direction against the respondents to restore power supply to their unit and allow it to run. In its reply, the Pollution Control Board produced a letter submitted by the District Environmental Engineer wherein it was stated that the unit had rectified its defects, which meant that the criminal action against the unit could be dropped.

In pursuance of the directions of the High Court of Madras passed in Contempt Petition related to this matter, the unit was permitted to run only after individual inspection by a team of officers who were, thereby, required to submit a report which would be the sole basis to assess whether the units should be granted permission to operate, although decision of the Monitoring Committee would be the criteria in passing an absolute order. However, it was found that Board had given temporary authorization for temporary electricity supply and as a result the CETP was unable to be inspected by the Board and the Monitoring Committee and individual units were allowed to run even though they had not achieved the ZLD.

Since this went against the order of the High Court, the Tribunal made it clear that the Board should not be swayed by the recommendation of the District Environmental Engineer and should direct responsible officers to inspect the CETP and the individual units and pass appropriate orders thereafter. In the meantime, orders were passed wherein the applicant unit was not permitted to run and no electric supply was to be provided unless the aforementioned procedure was followed.

With the above directions, the application was disposed of.

Narinder Kumar Shukla & Ors
v.
Sh. Jagdish Saphiya & Ors
Original Application No. 135/2015 (PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R. Yousuf
Keywords: Stone crushers, Mining
Decision: Dismissed
Date: 27 May, 2016

JUDGMENT

The application was filed seeking removal of stone crushers and all other connected items from the banks of river Beas and its meeting point at Khad Bhariva in village Sakoh, District Kangra (H.P), as well as payment of compensation to villagers affected by the illegal activity of the respondents. The applicant's plea was that the private respondents were carrying out illegal mining of sand, small stones and pebbles and digging out the sides of the river Beas for the said purpose. It was also alleged that in order to reach the river and its meeting point, an illegal road on the lands of the villagers has been constructed and hundreds of trees have been felled in this process. It was further stated that a stone crusher was installed at the disputed location in violation of the guidelines, "River/ stream bed mining policy guideline" issued by the State of Himachal Pradesh which prohibits mining on government land and was also against the State Government Notification dated 29.04.2014 which provides for a minimum distance for setting up of stone crusher as 500 meters from the village abadi. As per the applicants they had also made representations/complaints before the concerned authorities but since no action was taken, the applicants had to approach the Tribunal.

The respondents contended that they have mining leases in their favour for excavation/collection of sand, stone and bazri from the river bed and the site was found suitable for installation of the stone crusher. They further denied allegations of construction of illegal approach road, felling of trees and destruction of environment. It was further contended by the respondents that the guidelines had no relevance in view of the Himachal Pradesh Minor Mineral Concession and Minerals Prevention of Illegal Mining, Transportation and Storage Rules, 2015, as per which lease can be granted for mining in government land and thus there is no violation.

The tribunal had to decide whether any violation had been committed by the respondent in granting the mining lease and installation of the stone crusher, and also whether there had been any environmental degradation. The tribunal found merit in the argument of the respondent that the 2015 Rules deal with the matter comprehensively, and permit stone crushers to be installed for the purposes of running a mineral based industry even on government land. The tribunal also found that environmental clearance in favour of Respondent No.3 had been granted but had not been appealed against by the applicants,

and therefore such clearance was not allowed to be challenged in the guise of an application and without filing an appeal under Section 16 of the NGT Act. Further consents to establish and operate in favour of Respondent No. 3 for establishment and operation of stone crusher was also granted by the State Pollution Control Board. To verify as to whether the stone crusher was installed as per the parameters provided in the 29.04.2014 Notification, the Tribunal relied upon the inspection of the Site Appraisal Committee at the Sub Divisional level which stated that the crusher was in accordance with the siting criteria. The Tribunal observed that even though the minimum distance between the village and the stone crusher was less than the prescribed distance as stated in the Site Appraisal report, however the same was relaxable in view of the Notification since the site was surrounded by hills which served as a natural barrier, as a consequence of which the minimum distance of 500 metre need not to have been strictly applied.

Accordingly, the application was dismissed finding no violation of any rules or parameters.

Mr. Rajiv Rattan
v.
Haryana Urban Development Authority & Ors
Original Application No. 165 of 2015 (PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Prof. A.R Yousuf
Keywords: Encroachment, Park, Limitation, Jurisdiction
Decision: Partly allowed
Date: 27 May, 2016

JUDGMENT

The application was filed against alleged illegal encroachment by the private respondents, upon land earmarked for a public park in sector 31, Gurgaon and use of the same for raising construction of school building. It was also alleged that though the said fact was brought to the notice of the Haryana Urban Development Authority ["HUDA"] and Commissioner of Police, no action against the same was initiated.

As per the applicant the area in question was earmarked as public park in the Huda Master plan of 1992 which was adjacent to the plot allotted to the school. However, the school authority illegally grabbed part of the park area (½ acre) in connivance of the Town Planning wing and raised a common boundary wall to prevent the people from using the same. It was further alleged that a full-fledged senior secondary school was being run instead of a primary school as was proposed in the Plan. The applicant also raised issues of illegal parking and water extraction through bore wells dug at the site. The applicant therefore prayed for demolition of the illegal construction, restoration of the park, cancellation of lease deed executed in favour of the respondents with respect to the part of the park used illegally and to set aside the decision of HUDA reducing the area earmarked for park.

The respondents pleaded that the application was time barred as per Section 14 of the National Green Tribunal Act, 2010 and also not maintainable on grounds of jurisdiction. The respondents further stated that the constructions were raised as per the approved building plans and demarcation plan which was revised in view of the previous litigations whereby the Respondent No.1 was under an obligation to provide 1.5 acre of land to the school authorities in pursuance of which ½ acre was carved out from the park and allotted to the private respondents.

The questions before the tribunal were therefore whether the application involved a substantial question relating to environment bringing it within the jurisdiction of the NGT, and whether the limitation period had been exhausted. The first question was answered in the affirmative as the school building was raised to 4 floors in contravention of building norms, the school buses being used were parked on the road side and led to congestion and air pollution, and the public park being encroached upon could no longer be used as an open space for access to fresh air and recreation. With regard to the

question on limitation, the cause of action was determined from the date when the construction of the school commenced in the year 2010 after receiving approval from HUDA. Thus the claim of the applicant with respect to reduction of the size of the park was not accepted for being hopelessly barred by time under section 14.

Thereby, the tribunal directed the Respondent No. 1 to demarcate and take possession of the land in excess of the permitted area of 1.5 acres and develop the same as public park on removal of all encroachments. It further directed the private respondents to keep the vehicles only within the premises so as to avoid pollution. Further, environmental compensation for the encroached land at the rate of Rs 1000/- was imposed if the respondents were found in possession of any excess land.

Accordingly, the application was disposed.

C. Rajendran
v.
The Government of Tamil Nadu & Ors
Application No.69/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Tree felling
Decision: Dismissed
Date:30 May, 2016

JUDGMENT

This application was filed by an advocate who challenged the proposal of the respondents for cutting various trees in the Dharmapuri District in order to construct a combined court complex, having 8 different courts within the disputed area. The applicant's sole grievance was that the respondents were attempting to remove some of the most valuable trees.

The District Judge stated that as per the records, the land was not a forestland; therefore the applicant's apprehension was misconceived. He further stated that the trees being cut were being used for firewood and were not a rare species and that orders were passed, allowing the cutting of trees on the condition that for every tree cut, 10 trees should be planted. However, the applicant pointed out the order of the District Forest Officer, which stated that the office had assessed the value of trees and that separate permission needed to be obtained from a competent authority to fell/remove the trees. To this, the respondent submitted that the permission of the Revenue Divisional Officer had already been obtained and that earnest steps would be taken to see that the cutting of valuable trees like Neem, Tamarind, Pungam etc would be avoided as far as possible.

Considering the above submission, the Tribunal that the site was not located in a "forest" and there was an absolute necessary for having a combined court complex in the said area as the district was a backward area. However, it directed the respondents to avoid the cutting of trees as far as possible and abide by the condition of planting 10 trees for every tree being cut and maintain them for the next 5 years.

With the above directions, the application was disposed of.

M/s. K. Sundararajan Hot Mix Plant & Ors.
v.
The Tamil Nadu Pollution Control Board & Anr.
Applications No. 124/2016

M/s. Sree Renugambal Constructions
v.
Tamil Nadu Pollution Control Board & Anr.
Applications No. 125/2016

M/s. Arokianathan Construction
v.
Tamil Nadu State Pollution Control Board & Anr.
Applications No. 126/2016

M/s. M.R.N Engineering Enterprises
v.
Tamil Nadu Pollution Control Board & Anr.
Applications No. 127/2016

M/s. Sri Ganesh Enterprises
v.
Tamil Nadu State Pollution Control Board & Anr.
Applications No. 128/2016

And

M/s. Paam & Co.
v.
Tamil Nadu Pollution Control Board & Anr.
Applications No. 129/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent Renewal, Guidelines
Decision: Disposed
Date: Combined judgments dated 30th May & 2nd June, 2016

JUDGMENT

This application was filed for a direction against the Pollution Control Board to consider the applicant's application for renewal of Consent for carrying on the activity of Hot Mix Plants. The applicants submitted that all activities had been stopped regarding the plant

and an undertaking had been given which stated that no activities would be carried on unless the Board renewed “Consent”.

The Board submitted that they were framing guidelines and regulations for such plants and the same was in advance stage, requiring approval by the Chairman. In view of such submission, the application stood disposed with a direction to the Board to consider the current application on merit and pass orders. The Tribunal clarified that such orders should only be passed on the guidelines being framed, once they were finalized and issued further directions to the Board to monitor the activities of these applicants and ensure compliance by not allowing them to carry out any activity till consent was renewed.

Subsequently vide order dated 02.06.2016, the Tribunal on submission of the Board clarified that the appellant authority had passed orders not to seal the premises of the applicant unit. On this juncture, the application was disposed of.

P. Pandurangan
v.
The District Collector, Villupuram District & Ors
Application No.100/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarrying, Riverbed Mining
Decision: Disposed
Date: 30 May, 2016

JUDGMENT

A resident of Kalinjikuppam Village, Villupuram District filed this application on behalf of the villagers aggrieved by the indiscriminate sand quarrying in the village, due to which seawater entered into the agricultural fields, affecting their agricultural operations. Further, the main source of supply of water was also affected due to the aforementioned activities and riverbed-mining activities were being carried out illegally, against which no action had been taken despite approaching the authorities. Therefore, the applicant prayed for directions to revoke all the licenses issued to the violators.

Subsequently, the applicant submitted that the Tribunal had issued an order of injunction after which the quarrying had been stopped. It was also submitted that the High Court of Madras had given guidelines in respect of the violators to prevent illegal quarrying of sand, but the directions had not been followed; these conditions were so grave that by virtue of illegal conduct, the farmers were losing their livelihood and committing suicide. However, in their reply, the respondent submitted that the quarrying had been done on a scientific basis only by the Government who had also issued G.O.Ms by which District Level Task Force was created to monitor the quarrying at a local level and curtail illicit activities.

In view of the submission, the Tribunal directed the District Collector to take action in cases where any illegal quarrying of land was being brought to their knowledge and follow the spirit of the GO. In case of emergency, it was always open to the District Administration to take the assistance of the Police for necessary protection. The Tribunal also made it clear that the said direction should only be for the purpose of implementing the sanctioned mining lease and for curbing the illegal activities.

With the above observation, the application was closed.

Subhas Datta & Ors
Vs.
Ministry of Environment & Forests & Ors
Original Application No. 77/2014
And
Mohistikari Paribesh Jivan O Krishi Kalyan Mancha & Anr
Vs.
Ministry of Environment & Forests & Ors
Original Application No. 109/2014 (EZ)

Coram: Justice S.P Wangdi, Dr. P.C Mishra
Keywords: Prior Environment Clearance, Air Pollution, Water Pollution, Carbon black
Decision: Dismissed
Date: 31st May 2016

JUDGMENT

This application was filed with respect to the hazardous damage being caused to the environment by industries engaged in manufacture and process of Carbon Black. It was contended by the applicant that such industries require prior environmental clearance and it was the case of the applicant that the Respondent Company, which was a major manufacturer of Carbon Black, did not have an EC and was operating in violation of the EIA Notification, 2006.

According to the applicant, the Respondent manufacturer was within Entry 5 (e) of the EIA Notification, which provides for petrochemical based processing and Entry 5 (c), which provides for Petrochemical complexes, both of which require Environmental Clearance. It was also alleged by the applicant that the respiratory protection used in the Respondent's unit was of degraded quality and caused damage to the environment by discharging toxic gases and effluents into the air and water thereby causing pollution. Based on such contentions, the applicant prayed for an order for permanent injunction restraining the Respondent from carrying out any activities, which involve manufacturing of Carbon Block and to direct West Bengal Pollution Control Board to withdraw the consent to operate and take steps to close the unit. The Respondent contested the application by stating that only those Carbon Black units which use petroleum based oil as raw material require Environmental Clearance, which was not the case here as the Respondent only used coal tar based feed stock, denying further allegations of emission of toxic fumes and effluents.

Directions were issued to the Central Pollution Control Board to inspect the Respondent's industry and ascertain the pollution measures undertaken by them which was duly complied with and the report presented by the Board indicated that the industry had all necessary arrangements in place to ensure zero discharge. This was also confirmed by a

team of scientists and experts appointed by the Tribunal. The Tribunal observed that inspection of the industry in 2010 by the West Bengal State Pollution Control Board was not found to be satisfactory. However, in the subsequent inspections made by the Board and CPCB, the unit was found compliant.

While determining the question as to whether the Respondent industry requires Environment Clearance, the Tribunal considered the amendment dated 25.06.2014 in the EIA Notification, 2006 to include coal tar processing units in the list of the projects requiring Environment Clearance. The Tribunal observed that the Respondent industry being a coal tar based carbon black unit falls under the ambit of the EIA Notification, 2006 as amended in 2014. However, it was held that since the amendment would apply prospectively and taking into consideration the fact that the industry was established prior to 2014, the operation of the unit could not be treated as a violation.

As a result, the Tribunal found no merit in the application and dismissed the same with no order as to costs.

Jalbiradari & Anr
v.
Ministry of Environment & Forests & Ors

Appeal No. 7 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar
Keywords: Reference, Ex-Post Facto Environmental Clearance, Environment Compensation, Polluter Pays Principle, Precautionary Principle, Principle of Sustainable Development
Decision: Disposed
Date: 31 May, 2016

JUDGMENT

The matter was referred before the Chairperson under Section 21 of the National Green Tribunal Act, 2010, as there was a clear difference of opinion on the material issues of the case between the Judicial and Expert Member of the Western Zone Bench of the tribunal who delivered separate judgements on 22.01.2015. Thus the matter was referred to the Chairperson to make a reference.

The appellant had challenged the Environment/CRZ Clearance dated 04.12.2012 issued by the Ministry of Environment, Forests and Climate Change to the Mumbai Metropolitan Region and Development Authority (MMRDA), the project proponent herein for construction of retaining wall and service road along the banks of river Mithi in Mumbai, and had prayed for stoppage of the blasting operations, concretisation of the river bed and restoration of the river along with demolition of the project. The project was in CRZ I, II and III and 90% of it had already been completed. One of the main contentions of the appellant were that the project had already commenced its construction in 2008 i.e much before applying for the EC and did substantial damage to the environment. However, the authorities granted the EC overlooking the said aspects and without following the due process of law.

The Chairperson however did not deal with the facts in great detail, but focused on the main judgement where the conflict had arisen. The Chairperson dealt with the judgment delivered by the Ld. Expert Member in which the member had observed that due process of law was not followed as relevant documents were not appraised by the MCZMA/EAC and therefore expressed the need of reviewing the environmental safeguards imposed in the CRZ clearance. It aslo gave a finding that 90% of the construction was already completed thus, creating a 'fait accompli'. Based on the said observations, the Ld. Expert member directed to keep the EC in abeyance for a period of four months and remitted the matter to the EAC for objective appraisal/consideration based upon the discussion in the judgment, the reports/material available and physical progress of the project.

So far as the judgment of the Ld Juducial Member was concerned, though it agreed with the findings of the Ld Expert Member, however, it substantially differed with the grant of relief and consequence of non-compliance to the procedure under CRZ Notification. The judicial member noted that there was no provision for ex-post facto clearance, neither there was a proper appraisal of the project due to lack of hydraulic studies and EIA report to ensure that the project was viable and unlikely to cause environmental damage. Thus, the member noted that the entire activity carried out without following the proper procedure laid down under CRZ Notifications was illegal and against the precautionary principle and therefore the EC could not survive thus, it differed with the view of the Expert member to keep the EC in abeyance and remand it to the EAC.

The Tribunal found that the difference between the two members was on a very niche portion of the facts of the case, i.e. while both the Ld members were of the view that due process was not followed and the widening of the river and construction of retaining walls caused damage to the environment, the difference of opinion was in respect of keeping the EC in abeyance and to re-examine the same imposing fresh conditions for protection of environment and ecology/or quashing the same completely bringing a stop on the project. The Tribunal recorded that the project maintained status-quo on the date of the judgment.

The Tribunal found that it concurred with the judgement passed by the Ld. Judicial member and observed that in large number of cases falling under the category of 'fait accompli', the Tribunal has followed the principle of sustainable development and polluters pays principle and imposed environmental compensation for damaging the environment/commencing construction without complying with the legal provisions/violating the orders and directions of the Tribunal. In normal course, the construction of the project had been stopped and remanded back for grant/consideration of the EC or issuance of fresh EC. The Tribunal had also ordered demolition in some cases but it noted that all these cases were not the cases of irreversible or irreparable damage. It was observed that when 90% of the project work is over, stopping the same would lead to huge wastage of public funds and resultant environmental damage caused by its demolition. Thus, in such cases the Tribunal depended upon taking restorative and remedial measures requiring re-appraisal and re-application of mind. However, the Tribunal agreed with the views of the Ld members that the construction had taken place without compliance of the necessary provisions and therefore incur direct liability on the basis of strict liability principle though not with exactitude but by applying some guesswork, the project proponent (MMRDA) was held liable to pay environmental compensation. Thus, initially imposing 25 lakhs as environment compensation, the Tribunal directed EAC with an expert member of NEERI to re-examine the matter and pass fresh order of EC with restorative and remedial measures besides computing the loss caused to the environment. It also directed the respondents to comply with the directions of the High Court of Bombay in various PIL's issued from time to time with respect to the project in question. The Tribunal further directed the judgment passed by

the Ld Expert Member to apply mutatis mutandi alongwith other directions and answered the Reference accordingly.

Vikrant Tongad

v.

Noida Metro Rail Corporation & Ors

Miscellaneous Application No. 1092 of 2015

In

Original Application No. 478 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Environment Clearance, Metro Rail construction
Decision: Allowed
Date: 31 May, 2016

JUDGMENT

The applicant was a public spirited person working in the field of environmental conservation, and filed an application against the construction of metro line from Noida to Greater Noida, on the grounds that no Environmental Clearance ["EC'] had been obtained, and the environment was being harmed by the continuance of the project in violation of ecological principles. The applicant also submitted that the construction activities involved extraction of ground water for which no permission from the Central Ground Water Board was taken. It was the contention of the respondent that the project does not require EC and does not harm the environment in any manner. The respondents argued that the rail project, metro rail project are not within the purview of Environmental Impact Assessment Notification of 2006 ["Notification"]. Therefore, there were two questions to be determined, first, whether the project was covered by Entry 8B of the Notification and required EC, second, whether any environmental degradation/pollution has been caused by it. Another issue was regarding any precautionary measures to be carried out by the Project Proponent before proceeding further.

With respect to the first issue, the tribunal referred to a number of judgments in similar cases, and concluded that the Notification has to be interpreted liberally, as the entry is worded ambiguously, in accordance with the principle of purposive construction. The entry provides that EC must be obtained for 'Township and Area Development Project', and the tribunal held that the object of the Notification would be defeated if huge constructions are simply exempted because they are not specifically stated under any of the entries. The court held that the expressions 'Township' and 'Area Development Projects' have to be read as disjunctive, while development projects could be exclusive of a township, township may include a development project in general. The project in

question included use of land for construction of stations, substations, receiving stations, etc, all which are huge constructions beyond the threshold limits of the notification. The total land area required for the project in the present case was 2,84,762.01 sq. mtrs. which was higher to the threshold built up area and in excess of 1,50,000 sq mtr.

Therefore, the tribunal held that EC was obligatory, but did not impose compensation upon the PP, on the condition that it would comply with the terms and conditions that would be imposed on it by the State Environmental Impact Assessment Agency ["SEIAA"]. The tribunal declared the project as Category-B1 covered by Entry 8(b) of the Notification, directed the respondent to obtain EC within three months from the date of the order, and directed the SEIAA to impose conditions in regard to remedial measures as well as for project completion while ensuring environmental protection and also pass demolition orders in case any work already executed by the proponent had caused any environmental damage.

The application was thereby disposed of, without discussing Issue 2 as the Tribunal directed SEIAA to deal with the aspects of environmental protection and impose restrictions in this regard.

M/s. Yes Yes Minerals
v.
Ministry of Environment & Forests & Ors
Application No.123/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Mining, Extension of ToR
Decision: Partly Allowed
Date: 1 June, 2016

JUDGMENT

In this case, the issue arose due to the granting of mining lease to mine minerals such as Garnet, Ilmenite and Zircon in the Nagapattinam District of Tamil Nadu. On the basis of the proposal made by the applicant, the 1st respondent had issued Terms of Reference with a validity period of two years and subsequently, had also extended the ToR for a further period of one year on the applicant's request for the reason that the public hearing could not be conducted due to certain legal issues. Subsequently, taking note of the order of the High Court of Madras directing to process of the approval for mining the heavy mineral beach sand, the EAC had extended the ToR further for a period of one year.

There had been certain Writ Petitions pending before the Hon'ble High Court of Madras and therefore the public hearing could not be conducted and in those circumstances, the applicant sought further period of extension of ToR. When this extension for the ToR had not been granted, the present application was filed with a prayer to direct the respondent for granting extension of time. Taking note of the earlier extensions given by the respondent twice and also considering the fact that public hearing could not be conducted for no fault of the applicant, the Tribunal was of the view that to meet the ends of justice, the ToR should be extended for a further period of 5 months.

Accordingly, the application was disposed with direction to not grant any further extension, apart from the 5 months granted already. It also issued a direction to expedite the public hearing process in accordance with the EIA report and as per the direction given by the High Court.

Ashish Nawalgaria
v.
Union of India & Ors.
Application No. 36/2016
AND
V.Sundar
v.
Union of India & Ors
Application No.48/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Post Facto Environment Clearance, Polluter Pays Principle, Environment Compensation
Decision: Dismissed
Date: 1 June, 2016

JUDGMENT

The applicants who were aggrieved by the actions of the project proponents (Respondent No. 5 and 6) in undertaking construction of a multi storeyed building with the name of "TVH Quadrant" in Adyar, Chennai approached the Tribunal for directions to the respondents authorities to take appropriate action against the project proponents in respect of their building project, for violation of EIA Notification 2006, including cancellation of EC dated 15.07.2014 granted by SEIAA and demolition of the multi-storied building, apart from praying for a permanent injunction to put up any construction at the proposed site and causing pollution to the environment further directing the project proponents to restore the damage caused to the property and environment. Since both the applications' No. 36 and 48 raised similar issues, the same were heard and decided together.

In cases of building construction projects of more than 20,000 sq.m, prior EC is a mandatory requirement, as per the EIA Notification, 2006. The applicant alleged that the construction of the building was commenced without obtaining prior EC and SEIAA, ignoring the provisions of EIA, chose to grant ex-post facto EC which was granted by virtue of the Office Memorandum of MoEFCC dated 12.12.2012 and 27.6.2013. The applicant submitted that though the said OMs were stayed by the Principal Bench of the NGT in OA 135 of 2014 on 21.05.2014 (and later quashed vide its order dated 07.07.2015), the SEIAA granted the EC on 15.07.2014. The said order of the Principal Bench of NGT was stayed by the Hon'ble Supreme Court on 24.09.2015 which was subsequently clarified on 23.11.2015 and that the same was applicable only in respect of the project proponents who were before the court. However, the project proponents proceeded to construct the building and undertook construction in violation of the EC

conditions. Vide order dated 26.02.2016, the Tribunal granted an interim injunction restraining the project proponents from undertaking further construction.

In response to the said application, SEIAA admitted to the fact that the construction of the project was started prior to the grant of EC. However, since at that particular period of time, the said office memorandums were in operation, the authority appraised the project on receiving letter of commitment and expression of apology by the project proponent and only after considering that the State Pollution Control Board had filed a criminal complaint before the Judicial Magistrate for violation of EIA regulations by the project proponent, the project was granted EC. It was further stated that when the OM's were stayed by the Tribunal vide an interim order dated 21.05.2014, SEIAA was not a party to the application. However, when it came to be aware of the said order, it did not proceed with any further proposals on the basis of the OM's. But since the present project was already appraised and recommended for grant of EC prior to the stay order, as a natural consequence of the same, the EC was issued. The Board stated that it had responsibly taken action against the project proponent for violation of the EIA regulations and had in fact returned the application for consent to establish due to want of additional information to which the project proponent was yet to apply.

In reply to the application, the project proponent (Respondent No. 5) stated that the applicant had deliberately suppressed the order of this Tribunal dated 25.3.2015 passed in Appeal No.95 of 2014 where the impugned EC was challenged but was dismissed on the ground of limitation. Against the dismissal, the appellant had approached the Supreme Court in Civil appeal which also came to be dismissed. It was alleged that as per section 14 (3) the application was barred by limitation as it was filed in 2016 challenging the EC granted in 2014, much prior to the judgment passed in S.P Muthuraman matter. The respondent submitted that the construction work was nearly completed and it had taken care of the pollution aspects while building the same. In response to the issue of limitation, the applicant stated that the application was well within the period of limitation prescribed under section 14 as till date the impugned EC was not in public domain. He further contended that the EC was bad in law since it was considered and granted at a time when the OM's were stayed by the Tribunal.

The Tribunal decided the applications on limitation and maintainability. It observed that the applications had challenged the impugned EC under section 14 which in normal course had to be challenged under section 16 (h) of the NGT Act, 2010. The Tribunal noted that the applicant had taken rescue of section 14 only to avoid the limitation period prescribed under section 16. It further rejected the plea of the applicant that the EC was not in public domain since the same EC was previously challenged in another matter (Appeal No. 95 of 2014) under section 16 which means that the same was already in public domain. The Tribunal further noted that the limitation could not be computed from the date of judgment in S.P Muthuraman matter since the requirement of prior EC is a mandate of EIA Notification, 2006 and by striking the two OM's in the judgment, the Tribunal had only declared the statutory requirement which could not be taken as a

starting point of limitation. It further held that since the application had simply challenged the EC, the limitation would run from the date of communication of EC in which case, the applications were already time barred. The applications were also not found to be maintainable as the same issue was decided by the Tribunal in the earlier proceedings which was upheld by the Supreme Court.

The Tribunal noted that the larger issue other than the constitution of the expert committee to find out ecological and environmental loss caused due to illegal construction raised by the project proponents without prior EC was pending for final decision before the Supreme Court. However, it had upheld the direction of the Principal Bench imposing 5% of environmental compensation on the builders towards their liability for illegal and unauthorized construction. Considering that there had been a statutory violation by the project proponents for raising construction before grant of EC, the Tribunal found itself entitled to invoke "Polluter Pays Principle" and imposed environmental compensation of Rs.1,00,00,000 (Rupees One Crore) on the project proponents. However, it did not allow for demolition of the project considering the investments made and interest of the third parties in the project.

Satyanarayan Banchhor & Anr
Vs.
Union of India & Ors
Original Application No. 40/2015 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: EC validity, EIA Notification, 1994
Decision: Dismissed
Date: 01 June 2016

JUDGMENT

The application challenged the validity of the Environment Clearance granted by the MoEF to Lower Suktel Irrigation Project proposed at Bolangir, Odisha. It was alleged that the Environment Clearance dated 04.12.1998 which was granted for a period of five years under EIA Notification, 1994 lapsed due to non-commencement of the project work and the same started only in 2013 without obtaining any fresh clearance. Thus, based on the said facts, the applicants pleaded for declaring the said construction work illegal for being undertaken in violation of the Notification and to restore the forest and agricultural lands to its original condition.

The Tribunal observed that though the EC letter was silent on its validity, however, the perusal of para 2. (III)(c) of EIA Notification, 1994 makes it clear that the EC would be valid for a period of five years for commencement of the construction or operation of the project. It was also observed that the EC stipulated for a fresh clearance if any change in the scope of project is proposed.

The respondents objected the said application on grounds of limitation claiming that since the construction of the project was started in 1999-2000 and the application came to be filed only in 2015, the same was barred by limitation under section 14(3) of the NGT Act 2010. However, the said argument was rejected by the Tribunal observing that in the event the validity of the EC had expired, any work undertaken beyond the said period would constitute continuous cause of action. The Tribunal found that the infrastructure works of the project had been initiated in 1999 and the works taken up in the year 2013 were in continuation of the same. The MoEF also confirmed that there wasn't any requirement for a fresh EC. With respect to the contention of the applicant regarding change in the scope of project which caused lowering of the dam height resulting into acquisition of two more villages, the respondents stated that the same would not change the scope of the project as the FRL, reservoir capacity and its area of submergence had remained unchanged.

Based on the above findings, the Tribunal rejected the Applicant's prayers for not being well founded and devoid of merit, thereby dismissing the application with no costs.

Mr. S. Sundararajan

v.

The District Collector, Hill Area Conservation Authority & Ors

Application No. 132/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Chemical Plant, Consent, Pollution
Decision: Disposed
Date: 4 July, 2016

JUDGMENT

This application was filed praying for a direction against the respondents to close the operation of the 6th respondent's unit, Premier Chemical Plant in the Tirunelveli District. The Board was directed to inform the Tribunal as to whether the respondent unit had obtained consent, considering that the Board itself had found certain pollution being caused by the unit, which at that time, had been operating without consent.

When the matter was taken up, the Board submitted that the respondent unit had still not obtained any consent, although consent fees had been paid. It was submitted that as per the procedure, the application has to be made online, however no such online application from the respondent had been received. However, the sixth respondent insisted that the online application had been made and some samples of air and water had been collected for analysis by the board so the delay in processing was not the project proponent's fault.

Considering the above argument, the Tribunal disposed of the application with a direction to the Board to consider the application stated to have been filed by the respondent unit and pass appropriate orders on merits and in accordance with law, within a period of 2 weeks from the date of the order. In the meantime, the respondent unit was directed to suspend all activities and only continue the same in accordance with the order that may be passed by the Board.

R. Rajendran
v.
The Tamil Nadu Pollution Control Board & Ors
Application No.148/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Effluent Discharge, River Pollution, Compensation
Decision: Partly allowed
Date: 5 July, 2016

JUDGMENT

The applicant was aggrieved by the discharge of effluents from the tannery owned by the Respondent No. 4 which was causing damage to his agricultural lands. The applicant apart from seeking closure of the unit, also prayed for compensation for the damage caused to his land. The applicant had also filed a complaint with the Board, which ordered closure of the unit and directed disconnection of electricity. However, concerned with the possibility that the unit would be allowed to function, he approached the Hon'ble Tribunal on grounds of violation of the provisions of Water Act, 1974 and Environment (Protection) Act, 1986. On admission of the matter, the Tribunal had granted stay on the unit operations however subsequently the same was vacated and the respondent unit was allowed to carry on its activities.

The Board submitted that the 4th respondent had obtained the necessary consent but the unit was closed on various occasions for not achieving the requirement of Zero Liquid Discharge (ZLD) and discharging untreated effluents on land and the Palar River. The Board submitted that subsequently the respondent had installed STP and installed filter press for dewatering sludge and there was no transport of sewage/trade effluent thereafter. Considering the conduct of the respondent, the Board ordered for suspension of the closure order. It was the case of the respondent unit that the closure order was issued on false charges by the applicant as on date of filing of the application, the land of the applicant was dry. The respondent further claimed that the unit had remain closed alongwith the other CETP units pursuant to the order of the Board and therefore could not have discharged the trade effluents into the applicant lands. The respondent further questioned the analysis report of the Board. The applicant in response to the said allegations stated that the unit during its closure discharged its trade effluents which was stored in the unit which also amounted to illegal storage in violation of the Water Act.

Therefore, the issues that arose for consideration were whether the respondent unit had discharged tannery/sewage effluents into the land of the applicant, whether the same was liable to be shut down and whether the applicant was entitled to compensation for the damages stated to be caused to his land. The Tribunal observed that the tanker lorry which was used for transportation of the trade effluents and its discharge was engaged by all 43 CETP units of which the respondent unit was also a member. However, the

applicant did not provide any categorical evidence to prove that the discharge made in his land was attributed only to the respondent unit. The Tribunal also noted that the applicant had not impleaded either the owner of the tanker lorry or the driver in which case it was difficult for the Tribunal to conclude that the effluents discharged were that of the respondent's unit. It was further noted that the criminal court was looking into the FIR proceedings filed against the Respondent No. 4 and it was yet to decide the issue. With respect to the second issue as to whether the unit was liable to be closed down, the Tribunal relied upon the analysis report of the Board dated 15.04.2014 which recorded abnormal levels of TDS and chloride levels. The Tribunal raised doubts on the conduct of the Board which revoked its suspension orders ignoring its own analysis report. Thus, the Tribunal ordered for closure of the unit and disconnection of the electricity till the Board conducted fresh inspection and satisfied itself that the respondent unit was fully compliant. With respect to the issue of compensation, the Tribunal noted that the applicant had not proved that any damages had caused to his land. It was further not shown if the applicant was carrying out agricultural activities on his land and that his income had come down due to the discharge of effluents. Also there was no evidence to show that the 4th respondent had discharged the effluents. Thus, it was held that the applicant was not entitled to any compensation.

In view of the same, the application was partly allowed, with directions to the Respondent unit to be immediately closed and for the Board to pass appropriate orders within two weeks in accordance with the law.

S. Kasinathan
v.
The MoEF & Ors.
Application No. 79/2016
And
K. Premaraja
v.
SEIAA & Ors.
Appeal No. 120/2016

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Illegal Construction, EC, Consent, Demolition
Decision: Disposed
Date: 5 July, 2016

JUDGMENT

Application No. 79 of 2016 was filed by a resident of Puducherry, who was aggrieved by the construction made by the 8th respondent (project proponent) as against the law. The applicant prayed for directions to have the structure demolished, the MoEF & CC to initiate prosecution against the 8th respondent for violation of the Environment (Protection) Act, 1986 and restore the environmental damage caused by the illegal construction. The illegalities pointed out were that the 8th respondent had obtained permission for the building project with two basements for car parking and seven floors and for such an extent, the respondent ought to have obtained prior EC as the Consent to Establish obtained was not sufficient in this case.

The Pollution Control Committee had granted Consent to Establish for the project on 17.11.2014. However, when the Committee took notice of the fact that the construction was raised beyond 20,000 sqm for which prior EC is required under EIA Notification, 2006, it cancelled the Consent of the 8th Respondent vide order dated 19.04.2016. Against the said order the 8th Respondent filed Appeal No. 120 of 2016 before the Tribunal. The Respondent (appellant) in the appeal contended that he was not granted any opportunity to be heard since not obtaining EC was not deliberate but bonafide on the part of the respondent as he was not aware of adding the non FSI area and in fact immediately after it was realized an application was made on-line for EC.

It was not in dispute that the respondent had applied for planning permit for a commercial building and at that point, considering that the extent was less than 20,000 sq.m., he did not require an EC. However, having made a revised proposal to the planning authority, the Project proponent excluded the non FSI area and showed a lesser built up area with the defense that he was not aware that he had to include the non FSI area.

Therefore, considering that the area exceeded 20,000 sq.m., EC was necessary. The Tribunal voiced the Apex Court judgment that demolition was not a remedy; however, the project proponent could be prosecuted for violation. The Tribunal reasoned that while the Project proponent had thwarted the statutory rights to be exercised by the concerned authority in making a proper environment impact assessment, the property in questions was not situated in a water body, marshy land or encroached upon a forest land. In this case, the only remedy was to bar the project proponent to put in use the last two upper floors till a final decision was taken by the authorities.

Accordingly, the application and appeal were disposed with directions to the project proponent to not put to use the 5th and 6th floors, to seal them till the EC was issued for the same and for the SEIAA to take necessary steps to process the application made by the project proponent claiming EC for the entire built up area and to apply for the Consent to Establish after obtaining the EC.

Ananth Bhat & Ors
v.
Bangalore Development Authority & Ors
Application No.53/2016 & M.A. No. 55/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Park, Maintainability
Decision: Dismissed
Date: 5 July, 2016

JUDGMENT

This application was filed against the conversion, encroachment and destruction of a public playground in Koramangala, Bangalore. It prayed for a direction against the first respondent ("Bangalore Development Authority") to not allot the concerned site and preserve the same as per the Revised Master Plan, 2015 ("RMP 2015") and also for a direction to restore the playground, apart from stopping all construction activities in the Green Belt Area in violation of RMP 2015 in force. The applicant was aggrieved that there is a playground situated on the sites allotted to the second Respondent Trust to construct a school and that the first respondent had a duty to maintain 15% of the total area for parks and playgrounds.

In supporting their case, the applicants referred to the Gulmohar Parks' case where the Tribunal has already held that park area shall not be converted for any other purpose. The applicants showed various violations of RMP 2015 and provisions of the Bangalore Development Authority Act 1976, which denoted a bar against the respondent Authority from alienating the land allocated for the purpose of parks and playgrounds and prescribes maintenance of 15% total park area as per RMP 2015. Also, there was already a school situated 18 ft from the site, and construction of another school on the concerned site would lead to causing inconvenience of traffic congestion and deprivation of easementary right in respect of the playground to residents. The applicant's further stated that the respondents were in violation of the Air Act for not having followed the sanctioned plan. It was the case of the applicant's that in spite of the order of status quo by the Tribunal, the respondents had put up the construction of the school building, thereby defying the Tribunal's order. The applicants filed M.A.No.55 of 2016 for taking appropriate action.

The respondents denied all such allegations and stated that the application was not maintainable and was barred by limitation. They submitted that the site in question was never earmarked as a playground and in fact was earmarked as "College" under City Improvement Trust Act, 1945, subsequently converted as "school". It was also reiterated that the issue had been settled by the Hon'ble Karnataka High Court while dealing with a Writ Appeal against the dismissal of the writ petition in 2001.

The Tribunal observed that the respondent Trust had filed an application for allotment of the concerned site, to establish a school and the allotment was made in its favour. The Division Bench also held that the layout having been developed before the respondent authority had come into existence, it was not necessary to maintain 15% of the total area as lung space by way of a playground or a park and it was therefore, not open to the applicants to attempt to reopen the settled issue, leading to abuse of process of court.

In view of the above legal position, the Tribunal was of the view that the application was not maintainable and liable to be dismissed.

Suo Motu
Based on the news item published in "Eenadu" Telugu newspaper Hyderabad Main Edition dated 29.12.2015
v.
The Chief Secretary, Government of Telangana & Ors
Application No.3 of 2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Stone Crusher Units, Pollution, Polluter Pays principle
Decision: Disposed
Date: 5th July, 2016

JUDGMENT

The Tribunal took up the application on Suo Motu basis based on a report about unauthorized stone crushing units in Telangana published in "Eenadu" Telugu daily and ordered notice to the respondents. The report had stated that there were about 1000 stone crushing units existing in the state of Telangana out of which about 800 were functioning without "Consent" and were effecting the environment and causing pollution. The Vigilance Authorities had pointed it out 6 months back but nothing was being done about it.

The Pollution Control Board enclosed details of all the Stone Crushing Units. The Board submitted guidelines framed in respect of certain categories, including the stone crusher units, Action Taken Report on 11.05.2016 with District-wise Abstract Statement of the stone crushers, updated list of stone crushers in the State of Telangana and the list of stone crushers to whom revocation orders have been issued, apart from filing a copy of the model consent to establish and consent to operate order. It was seen that 256 units were operating with valid Consent to Operate, 320 units without valid Consent to Operate, 91 units were not in operation, 311 units were issued "Closure" orders of which the "Closure" order was revoked for 36 units for complying with the prescribed measures out of a total of 667 Stone Crusher Units.

The Tribunal though satisfied with the Government of Telangana and taking note of the environmental damage caused due to the running of the said illegal and unauthorized units over the years, it passed further directions to the Board to impose penalty under "Polluter's Pay Principle" on the offending units for the entire period of time for which they had been operating so and take steps of prosecution against concerned persons and officials.

The Tribunal also directed the Government of Telangana and the board to make periodical surveys of the stone crushing units in the entire state and maintain detailed records; the Board to monitor units that have been granted Consent, constitute a Special Task Force to inspect all the said stone crusher units in the State additionally for adequate

green belt in each of the units, to consider application for Consent only after spot inspection and knowledge of the correctness of the stand taken by those units; the State of Telangana to ensure that no such unit functions without Consent on their territory. The application was closed with the final direction to the Board to file a compliance report on the aforementioned directions.

Suo Motu
Vs.
The State of Tamil Nadu & Ors.
Application No.22/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Lake, Solid Waste, Waste Treatment, Water Pollution
Decision: Disposed
Date: 6th July 2016

JUDGMENT

Based on a newspaper report published in the New Indian Express under the heading "Filthy Blaze on Lake Bed Irks Residents", which related to the Peerkankaranai Lake, the Tribunal took Suo Motu cognizance of the issue and issued notices to the concerned authorities, including the Principal Secretary of Department of Environment & Forest, State Pollution Control Board and the Collector of Kancheepuram District.

In his Status Report, the Collector mentioned that he had taken steps to remove garbage dumped by the locals on the banks of the lake, under the control of the PWD and that the officials had been advised to put up a Board near the lake, directing the public not to dump any garbage. Further, the collection of the garbage had been entrusted with Women Self Help Groups and M/s. Ramanujam Social Service Society, wherein organic and inorganic waste were separately collected and dispatched to the compost yard for recycling.

The Pollution Control Board filed two reports in which it stated that the site had been inspected and it was noticed that a large quantity of Municipal Solid Waste had not been cleared, had only been removed up to the ground level and the ground was being leveled with sand in the lake bed. The second report indicated that the waste had completely been removed and had been shifted to the waste treatment facility site, located adjacent to the lake.

The District Environmental Engineer observed that such facility was situated on an elevated platform and therefore, there was no possibility of any leachates entering the water body. However, it remained a fact that the Peerkankaranai Town Panchayat had not applied to the Board for the purpose of necessary authorization.

Considering the above circumstances, the Tribunal was of the view that adequate steps had been taken by the Town Panchayat for the purpose of protecting the water body. Accordingly, the application was disposed with a direction to the Town Panchayat to make necessary application for authorization under the Water (Prevention and Control of Pollution) Act, 1981 and Solid Waste Management Rules, 2016 within a period of 2 weeks from the date of receipt of the copy of this order.

Shri. Mohammed Kabir & Ors
v.
Union of India & Ors
Application No. 261/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Environmental Degradation, Water Pollution, CRZ, Polluter Pays principle
Decision: Disposed
Date: 8 July, 2016

JUDGMENT

The applicants were aggrieved by the environmental degradation and pollution caused by the respondent industries by engaging in the production of fish oil and fish meal, thereby affecting the day to day affairs of residents living within half to 3km. radius in Ullal Town, Mangaluru. The key environmental issue was high water consumption because of its use as cooling water, air emissions, by-products, effluent discharge, malodor and noise leading to marine pollution and diseases among the residents of the locality. It was further submitted by the applicants that the respondent industries were located in an ecologically fragile area at the edge of Gurupur and Netravathi estauary, on lands belonging to the State Government, within the CRZ-I area, to be used for storing fish products as opposed to manufacture of fish oil and fish meal. The applicants therefore prayed for directions to stop operation of the industries, for commission of a Regional Environmental Impact Assessment and ecological survey and to prepare a plan to remedy the negative impacts caused by the industry. Further prayers involved shifting of the industries and restoring the area to its previous state and to award compensation to the affected persons. A number of communications evidenced that the respondent unit had been asked to shut down a number of times as it was functioning without the necessary licenses and permissions.

The respondents denied the allegations of malodour arising from the raw material and encroachment of the lands abutting Nethravati River. The respondents also stated units were already set up prior to the CRZ Notification, 1991 and so the said Notification was not applicable to the existing units and the modernisation of the existing units would never amount to violation of the said notification. It was further submitted that respondent units had installed new evaporators or placed orders for the same.

The Tribunal, at first, noticed that the applicant had waited 7 years before filing the application without giving any plausible explanation and that they had not challenged the NOC or the granting of the EC and had only prayed to close down the industries in the present application. Therefore, the tribunal was of the opinion that the belated application questioning such grants did not deserve such consideration. However, the case deserved to be considered on merits as it constituted a cause of action. Having heard the arguments, the following issues arose for consideration:

(i) Whether there was any violation of the CRZ Notification 1991 in permitting the respondent unit to operate in the said area? The Tribunal was of the view that the authorities had erred in granting permission to the respondent no. 21 who was allotted the land after the 1991 Notification came into force. It did not agree with the applicants' contention that the KSCZMA had no power to issue NOC. Here, all but one unit existed prior to 1991 and there was no bar under the Notification for continuing the existing units and the Notification was only prospective in nature and the NOC was only for the modernization of the fishing oil and meals plants. Subsequently, the KSPCP and SEIAA had granted consent to set up the CETP to take care of the pollution aspects.

(ii) Whether the activities of the units were prohibited? It was reported that due to shortage of raw fish, most of the units were not able to operate to their full capacity and during the inspections by the Board, the units were found not under operation. Therefore, at this juncture, the contention of the applicant to have the existing units removed was not sustainable and was rejected.

(iii) Whether the units were damaging the marine ecosystem by causing pollution in the locality considered to be ecologically sensitive? The factual position of the case indicated that the manufacturing units indulged in negligence, violated the pollution control norms, thereby causing water pollution and health hazards. In some units CETP was not installed or maintained. In spite of repeated directions, they did not mend their ways and continue to operate units in disregard of the environmental concerns, which was also noted by the Board itself. Therefore, the Tribunal found it fit to invoke the Polluter Pays principle against the respondent. The penalty amount to be paid under the Polluter Pays principle was determined on the basis of the original date of granting lease to the units, nature of activities of the units and their location in a sensitive area. It further directed the Association (Respondent No. 24) to pay an amount of Rs 25 lakhs for utter negligence in operating the CETP thereby releasing untreated effluents into the adjacent sea causing pollution. The penalty amount was directed to be paid in the Environment Relief Fund within one month from the date of the judgement.

The Tribunal further ordered the closure of the Respondent no.21 unit which operated illegally in violation of the CRZ Notification, 1991 and directions were given to the Board to continue to monitor the units and ensure proper functioning of the CETP before allowing operation. Accordingly, the application was disposed of.

Divisional Commissioner (Revenue)
Vs.
Deputy Conservator of Forest. Alibag Forest Division

Execution Application No.19/2016
In
Application No. 135(THC)/2013 (WZ)

Coram: Hon'ble Justice U.D Salvi and Hon'ble Dr. Ajay. A. Deshpande
Keywords: Tree Felling, Forest Area, Forest Clearance, Pipeline construction
Decision: Allowed
Date: 8th July 2016

JUDGMENT

This application was filed seeking permission for diversion of land for the purpose of tree cutting in the identified forest areas. It was submitted that Reliance Gas Pipelines Ltd. ('Project Proponent') had proposed the setting up of a pipeline of 12-inch diameter, for transportation of Ethane between Gujarat and Maharashtra. The total forest land involved in the construction was 25.66 hectares and out of this 1.8915 hectares of forest land was within the notified area. Further, it was proposed by the project proponent to cut a total of 4730 trees in the forest area of which 350 trees were in the notified forest area.

In response to the application, the Forest Department filed their reply stating that the Project Proponent had been issued approval for diversion of forest area under the Forest (Conservation) Act, 1980. Further, the Department undertook to ensure compliance of the conditions mentioned in the approval.

The Tribunal, while dealing with the execution proceedings in the Original Application No. 135 of 2013 passed an ad interim order on 03/12/2015 wherein it directed Chief Secretary of State of Maharashtra to not issue any permission to convert the land used at the identified forest area, especially by felling of trees and using of agricultural land for commercial purposes until the Tribunal had taken note of the urgency in establishment of any essential industries or infrastructure project. This was due to certain discrepancies in the identified forest area as identified in 1998 and subsequently in 2007-08.

The Tribunal granting leave clarified that the current application would not be considered as an appellate proceeding and was allowed with the directions whereby the Forest Department was to ensure that no forestland beyond 1.8915 hectares would be covered under this project, Applicant was to deposit the amount claimed by the Forest Department for compensatory afforestation and carry out plantation of 350 trees of native species in the monsoon season, construction activity was to commence only after

making the necessary payment and the Forest Department was to ensure compliance and submit a compliance report before the start of the construction activity.

Accordingly, the application was disposed of with no order as to costs.

POWERGRID Corporation of India Limited
v.
Deputy Conservator of Forest, Thane Forest Division

Execution Application No.16/2016
In
Application No. 135(THC)/2013 (WZ)

Coram: Hon'ble Shri Justice U.D. Salvi and Hon'ble Dr. Ajay A. Deshpande
Keywords: Compensatory afforestation, Eco sensitive Zone, Wildlife Sanctuary
Decision: Allowed
Date: 8th July 2016

JUDGMENT:

The application was filed seeking leave of the Tribunal for the construction work of Aurangabad-Padghe transmission line and cutting/trimming of trees which were coming within 10 kms from the boundary of Kalsubai Harishchandra and Tansa Wildlife Sanctuary.

The application was filed in view of the order passed in Application No. 135(THC)/2013 (Shobha Phadnavis vs State of Maharashtra & Ors) wherein the restrictions imposed by the High Court of Bombay (Nagpur Bench) on felling of trees within 10 kms area from the boundaries of National parks and sanctuaries notified as Eco sensitive zones on the basis of precautionary principle were continued by the Tribunal. The project involved forest diversion of 145.795 hectares of forest area out of which 32.824 was within the 10 km zone of the sanctuaries and involved felling of 1696 number of trees in the said area.

The applicant claimed to have received all the necessary permissions required under the Environmental Regulations and sought leave of the Tribunal for the construction of the said transmission line and towers. In response to the application, the Forest Department submitted that the necessary permission including the in-principle approval of the Central Government under the Forest (Conservation) Act, 1980 has been granted and therefore permission for the said project could be granted. Further, the environmental impact by the construction activity can be neutralized by resorting to compensatory afforestation and adopting the regulatory conditions laid down by Ministry of Environment and Forest.

There were two main issues that the Tribunal dealt with in the present application. First, whether the application seeking leave of the Tribunal to initiate the project can be construed as appellate proceeding. Second, the necessary directions to be issued while allowing the application.

The Tribunal noted that similar applications have already been dealt with before. The Tribunal referred to the order of *POWERGRID Corporation India Limited Vs. Ministry of Environment, Forest and Climate Change & Ors, Application No.118/2015 i.e.* wherein the Tribunal held that the applications seeking leave from the Tribunal needs to be viewed as applications merely for grant of ad-interim permission in view of the directions issued in Application No. 135(THC)/2013 and shall not be considered as approval of forest clearance under the Forest (Conservation) Act, 1980 and thus cannot be construed as appellate proceedings before the Tribunal.

Coming to the second issue, the Tribunal emphasized on the need of carrying compensatory afforestation and re-plantation simultaneously (Parripassu) with the project development activities. The Tribunal while allowing the application imposed three conditions whereby the applicant was directed to deposit the amount for compensatory afforestation as claimed by the Forest Department within fifteen days from the date of receipt of such claim from the Department, to carry out plantation of at least the number of trees required to be felled in the affected area which would be independent to the Forest Clearance and to begin the construction work only after the necessary payment has been made to the Forest Department.

Accordingly, the application was disposed without any cost.

Human Rights Forum
v.
Union of India & Ors.
Application No.206/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Post Facto Environment Clearance, Thermal power project
Decision: Partly Allowed
Date: 11 July, 2016

JUDGMENT

This application was filed against the 4x270 MW Bhadradri Thermal Power Station in Telangana which had commenced construction without prior EC and Consents. The applicant prayed for prosecution of the project proponent, Telangana State Power Generation Corporation Ltd, (Respondent No. 3) for commencement of work without appropriate environmental approvals and for imposition of heavy penalty under Polluter Pays' Principle and for restoration of the area damaged. The applicant further sought directions to the MoEFCC to examine the project de-novo and not to consider the proposal till proper action was initiated against the project proponent. The applicant stated that the respondent corporation had applied for EC and received TOR from the MoEFCC. However, while the proposal was pending, the respondent commenced construction of the project. The applicant placed reliance upon the photographs showing large amount of earth digging and excavation work at the site. The applicant further contended that the illegal construction work was badly affecting the surrounding agricultural activities resulting in damage to livelihood of the local people. On admission, the Tribunal issued an order of status quo till the respondent obtained EC from the competent authority. Against the said interim order, the respondent approached the High Court of Andhra Pradesh and Telangana in writ petition but subsequently withdrew the same.

The MoEFCC in response sated that it had granted TOR for the preparation of EIA/EMP report by the project proponent which was yet to be received. It further stated that the fact with respect to illegal construction was brought before it by the applicant which was confirmed by a subsequent inspection and that it had taken steps to prevent any further construction work. It was further submitted by the Ministry that the photographs showed presence of water body in the project site which was yet to be examined. The Board stated that it had conducted public hearing for the project and had not observed any construction activity during its visit. The project proponent in response contended that the project was proposed in order to meet the electricity demand of the newly formed State and that preliminary civil works were commenced after the preparation of EIA studies in order to complete the work on fast pace considering the requirement of public at large. It further submitted that the unit would commence only after obtaining EC.

The Tribunal noted that the project proponent had undertaken certain construction activities anticipating grant of EC. It analyzed the provisions of the EIA Notification, 2006 and noted that prior EC is a mandatory requirement under the said regulations. Thus, proceeding with the construction activities without prior EC was not in accordance with the terms and spirit of the EIA Notification. The Tribunal then considered as to whether the project proponent by making such preliminary construction had created a fait accompli situation. It relied upon the judgment of S.P Muthuraman passed by the Principal Bench which adopted a practical approach holding that it was not advisable to direct complete demolition of the construction while applying the principles of sustainable development and precautionary principles. Considering that the project in hand was a government project and proposed for public benefit, the Tribunal did not find it appropriate to impose fine under Polluter Pay. However, it directed the Pollution Control Board to initiate appropriate prosecution proceedings against the officials of the project proponent under the provisions of Water, Air and Environment laws. The Tribunal directed the EAC to proceed with the appraisal of project proposal and communicate its recommendations to the regulatory authority within eight weeks from the date of the order and till such time directions were issued to maintain status quo. The application was partly allowed with the said directions.

S. Shanthamurthy & Ors.
v.
Coastal Aquaculture Authority of India & Ors.
Application No. 140/2016

R.Sasikala
v.
Coastal Aquaculture Authority of India & Ors.
Application No. 142/2016

V.Mathavan
v.
Coastal Aquaculture Authority of India & Ors.
Application No. 144/2016

And

N.Iyyappan
v.
Coastal Aquaculture Authority of India & Ors.
Application No. 146/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Shrimp Culture Farms, Demolition
Decision: Disposed
Date: 11th July 2016

JUDGMENT

This application related to shrimp culture farms developed by the applicants, who prayed for non-interference with their shrimp culture farms in their respective survey numbers. The Tahsildar submitted that admittedly, there were 3 shrimp ponds and one had already been demolished and as per the earlier direction of the Tribunal, the demolition of all the shrimp farms were being done continuously.

Accordingly, the Tribunal made it clear that if the said two shrimp farms had not been demolished, the applicant himself should demolish the same within one week, failing which the Tahsildar should proceed with the demolition.

With the above direction, the application was closed.

Muhammed O.

v.

Member Secretary, Kerala State Pollution Control Board & Ors

Application No. 108/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarrying, Mining, EC
Decision: Allowed
Date: 13 July, 2016

JUDGMENT

This application was filed for the grant of an order of injunction against Respondents No. 7 and 8 to restrain them from carrying on quarrying or mining operations anywhere in the Arimbra Hills in Kerala, including clearing of vegetation without obtaining prior EC and other mining permissions and also restraining the said respondents from establishing or operating the crusher unit without submitting a revised plan.

However, it is stated that there is no activity in respect of the crusher unit and it is admitted that the respondents had not obtained ''Consent to Establish''. It was the case of the Board that the quarrying activity was not started in the place concerned.

Considering that the respondents had not applied for consent from the Pollution Control Board and no mining permissions had been given for the quarrying activities, the prayer asked for by the applicant was answered in favorably and the application was disposed of. However, the Tribunal made it clear to the Board to not grant any permission except following due process of law and not permit anyone from carrying on either mining or quarrying activities without prior permission.

Vetri Magalir Mandram
Vs.
The Secretary to Government, Department of Environment and Forest, Government of Tamil Nadu & Ors.
Application No. 166/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Solid Waste, Bio-Medical, Burning waste, Lake, Water Pollution
Decision: Allowed
Date: 13th July 2016

JUDGMENT

This application was filed seeking a permanent injunction against the respondent authorities from dumping the municipal solid waste, including bio-medical and hazardous waste and burning the same in Koladi Lake along with directions for the respondents to remove the waste already dumped at the site. It was the case of the applicant that when the Tribunal took up this matter earlier, an interim injunction had been granted against the Commissioner, Thiruverkadu Municipality from dumping of solid waste in the aforesaid water body. Subsequently, with the permission of the Maraimalai Nagar Municipality, the Commissioner, Thiruverkadu Municipality had taken its solid waste there, for dumping purposes.

When the District Revenue Administration conducted a meeting to find out the availability for land for Thiruverkadu Municipality, it was informed that Survey No. 522/2 of Pammaththukulam Village, Avadi Taluk was suitable for such purpose and available for allotment. Accordingly, inspection was carried out and land alienation proceedings had commenced, after which the Commissioner, Thiruverkadu Municipality was permitted to formulate a scheme for the purpose of treatment of waste generated in its municipal region.

In these circumstances, the Tribunal was of the view that the applicant's prayer had been answered in the sense that the Commissioner, Thiruverkadu Municipality was no longer dumping its waste in the water spread area. It further clarified that the alternative land should only be made available for the same after all the formalities had been complied with, giving strict directions to the Commissioner, Thiruverkadu Municipality to not dump its waste in the Koaldi lake and to make arrangement for the purpose of carrying the garbage to the Maraimalai Nagar Municipality. It also directed the respondent to remove the remaining garbage from the site and to follow all the procedures formulated in the Solid Waste Management Rules, 2016 after being allotted the alternative site.

With the above directions, the application was disposed of.

K. Rajesh
v.
The State of Kerala & Ors
Application No. 75/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Wetland, Coastal Regulation Zone
Decision: Dismissed
Date: 13 July, 2016

JUDGMENT

This application was filed against the LBS Integrated Institute of Science and Technology Centre, restraining it from carrying out any construction activities in connection with the establishment of a new campus for the Centre, in the proposed land, half of which had been classified as a wetland and the remaining extent was situated within the CRZ HT line.

The 5th respondent raised preliminary objections and contended that the intention of the extension of the institute was to establish a world class technical educational complex in the district of Malappuram which was a backward district constituting a large population of minorities. It was also submitted that acquisition proceedings prescribed in the Government Order issued by the State Government, had not been completed and the lands for the establishment of the institute had not been handed over to the respondents. Based on such objections, the application was not maintainable in law.

However, the applicant submitted that based on information received showing that some portions of the area attracted the CRZ notification, the respondent was not entitled to start any educational activities in the said area. Subsequently, the Kerala Coastal Zone Management Authority submitted that the Institute had given an undertaking which stated that except permissible activities, no other prohibited activities would be carried out within the CRZ area as per the notification and that the government was keen on implementing a programme from the welfare of the people of the state.

Therefore, the Tribunal held that the Institute was correct in its contentions as the entire proceedings were in the initial stage, due to which the applicant was not entitled to have an order in his favour, and would be free to challenge the orders once obtained from the requisite authorities in manner known to law. In view of the same, the application was dismissed.

Yasoraminfra Developers Pvt. Ltd.
v.
Kerala Coastal Zone Management Authority & Anr.
Review Application No. 05/2016
IN
Application No. 35/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Review
Decision: Dismissed
Date: 18 July, 2016

JUDGMENT

This application was filed by Yasoraminfra Developers, the applicant herein for review of the judgment dated 12.05.2016 passed in OA No. 35 of 2015 wherein the Tribunal had dismissed the original application challenging the order of the Kerala Coastal Zone Management Authority refusing grant of CRZ clearance to the applicant, for construction of the flyover project over the Chilavannoor backwaters in Cochin, Kerala. Considering that no new points were raised by the applicant in this proceeding and there was no error apparent on the face of the record, the Tribunal rejected the review by way of circulation.

Sheikh Altaf & Ors.
Vs.
State of Madhya Pradesh & Ors.
Application No. 26/2015 (CZ)

Coram: Hon'ble Justice Mr. Dalip Singh, Hon'ble Dr. S.S. Garbyal
Keywords: Compensation, Illegal waste dumping, Environmental pollution, Damage to property, Loss of life
Decision: Disposed
Date: 18 July 2016

JUDGMENT

This application was filed seeking compensation for the loss of lives and injuries to persons resulting to disability and damage to the property vis-à-vis dwelling houses of the applicants due to the acts of the Respondent No. 7 which illegally constructed a wall over an old fortification wall for the purposes of dumping garbage and waste material. The complaint arose after the fortification wall collapsed under pressure because of the waste dumping which affected the slope factor causing diversion of the flow of rain, resulting in accumulation of water on the side of the wall, thereby causing the collapse. The application was filed under section 15 with a view to seek additional relief, over and above the compensation already granted by the State Government and the Respondent No. 7 to the victims and their families.

The respondents raised preliminary objections with regard to court fee not being paid, the application filed without adhering to the rules and the application being not maintainable as the applicants were not victims of pollution and environmental damage covered under the enactments specified in the NGT Act. They also refused to allow additional payment considering the amount of compensation already granted. Respondent No. 7 even denied personal liability for any damage caused.

The Tribunal concluded that the objection for non-payment of court fee had no merit, as there exists an exemption for people below poverty line from payment of court fee under Rule 12 of the NGT Rules, 2011. Further, the argument of the Respondent for not providing additional compensation was negatived by the Tribunal stating that the receipt of compensation from any other authority or court did not debar the applicants from approaching the Tribunal for grant of compensation under section 15. It was held that the collapse of the old wall was due to the environmental pollution caused by the illegal dumping of waste in violation of the provisions of MSW rules, 2010 and Environment (Protection) Act, 1986 listed in Schedule I of the NGT Act, and therefore the application for compensation under section 15 was maintainable. The Tribunal directed for payment of compensation, Rs. 5 lakhs for damage to the property, Rs. 50,000 to applicant No. 1 and 2 and 25,000 to applicant No. 3 for suffering injuries and Rs. 5 lakhs for the death of each minor child.

C.V. Raghu
v.
Union of India & Ors
Application No. 327/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Environment Clearance, Quarrying
Decision: Dismissed
Date:21 July, 2016

JUDGMENT

In the present case, the Department of Mining and Geology had issued a permit to the respondent in 2015 by way of renewal, which was valid up to 2016. Further, the consent to operate granted to the respondent had expired in June 2016 and there was no extension of consent granted by the State Pollution Control Board ('Board').

It was also an admitted fact that as on the date of the application, the Project Proponent had not obtained Environmental Clearance ('EC') from the concerned authorities and it was held that merely having consent under the Air (Prevention of Pollution and Control) Act, 1981 and Water (Prevention of Pollution and Control) Act, 1974 and license from the Panchayat would not enable the respondent to proceed with the activities of quarrying.

Accordingly, the application was ordered with a direction against the respondent to not carry on the quarrying activities unless the above said requirement were complied with which included EC from the authorities concerned, explosives permit from the Department of explosives and renewal of Consent to Operate from the Board.

Shiv Prasad
v.
Union of India & Ors
Original Application No. 24 of 2014 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Limitation period, Recurring cause of action
Decision: Allowed
Date: 25 July, 2016

JUDGMENT

The application was filed seeking closure of industries/foundries of the private respondents for operating without environmental clearance and consents to operate and also for imposition of costs for causing loss to the environment in addition to issuance of directions to relocate the Jasodharpur Industrial Area (JIA) to a safer location and identify land for storing slag. It was also the case of the applicant that the industries had caused excessive air and noise pollution. It was further alleged that the industries were red category industries having high pollution potential which were severely affecting the Rajaji-Corbett Elephant Reserve.

The contention of the respondents was that the application was not maintainable on the grounds that the limitation of the application has been explained as 'continuous cause of action' by the applicant whereas Section 14 contains the words "first arose", which must exclude the concept of continuous cause of action. According to the respondents, the industrial area in question was established in the year 1996-1997 which was subsequently transferred to SIDCUL in 2011, and therefore the issue of EC to individual industries or JIA was time barred for being brought before the Tribunal in 2014.

Placing reliance upon the report of CSE, 2011, the applicants submitted that industries were the root cause of environmental degradation in the area and pleaded that the application was filed mainly for restoration of the environment invoking the provisions of section 15 of the NGT Act, 2010 which provides for a limitation of five years from the date of cause of action. The applicant further submitted that the cause of action in the present case must be interpreted as 'recurring cause of action'.

The Tribunal observed that the application requires to be read in its entirety to examine the nature of cause of action. The tribunal defined 'cause of action' as a bundle of essential facts necessary to be proved, and held that running of industries without environmental clearance which have generated adverse effects on flora and fauna, would amount to a recurring cause of action, for which relief can be granted under Section 15 of the NGT Act, 2010. The word 'recurring' was interpreted as per the decision in *Forward Foundation (A Charitable Trust) & Ors v. State of Karnataka*, to mean something happening again and again, with an element of a fresh cause, unlike a continuous cause of action which was

understood as a series of acts or transactions. The court took note of the report of the CSE in 2012 which pointed out adverse impacts of the running of the industries as an incident of a fresh, composite, and distinct action, by virtue of which the application would not be hit by the concept of 'cause of action first arose'. As per Section 15(3), application for grant of any compensation, relief, or restitution of property must be made within a period of 5 years from the date on which the cause of such compensation first arose, and the tribunal found that the application filed on 10th February 2014 was well within the period of limitation prescribed under the said provision. The original application was therefore allowed to proceed further on merits.

Human Care Charitable Medical Trust
v.
Union of India & Ors
Appeal No. 30 of 2016 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Compensation, Precautionary Principle, Post facto Environment Clearance
Decision: Dismissed
Date: 26 July, 2016

JUDGMENT

The appeal was filed against the order of SEIAA refusing grant of Environment Clearance to the appellant for its project 'Human Health Care Charitable Hospital' at Sector 6, Dwarka, New Delhi, vide letter dated 6th May, 2016. The EC was refused in view of the fact that the project proponent had started construction of the project without obtaining the mandatory Environment Clearance and thus committed violation of the EIA Notification, 2006.

It was the case of the appellant that prior to the said Notification, there was no requirement for taking EC for construction of the building, and they came to know about this provision for the first time only in January 2015, after raising construction in excess of 20,000 sq. meters. The appellant then filed the application for EC with the SEIAA which came for appraisal in the month of April, 2015. During this time, no defect or deficiency was pointed out by the authority since at that time three Office memorandums issued by the MoEF dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 were in force which provided that EC could be granted in cases where construction activity had already started without obtaining EC.

While the EC application was pending with the authority, the said office memorandums were declared as *ultra vires* by the Tribunal vide its judgment dated 07.07.2015 in the matter of S.P. Muthuraman v. Union of India. The appellants then approached the Tribunal in OA No. 300 of 2015 which was disposed of with a direction that the EC application of the appellant must be dealt in accordance with law. When the project came up for appraisal before SEAC/SEIAA, observing that the construction of the project had reached at advanced stage without obtaining EC, it delisted the EC application and recommended for prosecution against the appellant under section 19 of the Environment (Protection) Act, 1986 and immediate stoppage of the construction work which led to filing of this appeal.

Finding no infirmity in the order of SEIAA in delisting the EC application of the appellant, the Tribunal observed that the case in hand being covered by the judgment of S.P Muthuraman v. UOI, required similar directions wherein project proponents were called

upon to pay environmental compensation under section 15 of the NGT Act, 2010 in lieu of the ecological and environmental damage caused by the illegal and unauthorised constructions raised by them in violation of the provisions of the EIA Notification, 2006 and recourse of the precautionary principle was taken to consider remedial measures to prevent and control further environmental damage by the said projects. Reiterating the principles laid down in the Muthuraman case, the Tribunal directed the appellant to pay 5% of the project cost determined on the basis of land value, cost of construction of the total area, development of the entire green and other areas, landscaping, medical equipment, machinery cost and other incidental expenditures for bringing up a Super Speciality Hospital of 380 beds which was quantified to be around 300 crores. In view of the same, the appellant was directed to pay 15 crores as environmental compensation.

The tribunal thereby disposed of the appeal, with constitution of a committee to report to the tribunal upon physical inspection of the project within 4 weeks, and directed for utilisation of the compensation amount by the DPCC for restoration of environment and ecology. It was also laid down that no further construction would be undertaken without the tribunal's orders, and that a complete report on all aspects would be filed which should be treated as a separate case and placed before the Tribunal for appropriate directions.

Rashid Noor Khan
v.
State of Madhya Pradesh & Ors

Original Application No. 291 of 2016 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar
Keywords: Reference
Decision: Application transferred back to the Zonal Bench for final disposal
Date: 26 July 2016

JUDGMENT

The petition was filed before the Central Zone Bench of the Tribunal praying for closure of all mining operations owned by the Respondents in the hills of village Dhamkheda in the State of Madhya Pradesh and for direction to the State that no further mining lease be granted in the area and construction be allowed in the vicinity of Kaliyasot river to preserve the eco-system, and that all details of illegal mining be reported by the concerned authorities.

Previously, the Hon'ble bench of the tribunal in an interim order directed the respondent state not to grant any permissions for mining activities in the area in question. Further, in another interim order dated 06.07.2015, it stayed the construction activities also including excavation or removal of any material and cutting of hills in the said area. However, when the matter came up for hearing before a different bench on 26.11.2015, it vacated the stay imposed on construction activities observing that private respondents were raising residential building complex on agricultural lands for which requisite permissions had already been obtained and there was no prima facie case of environmental damage. Thus, the bench allowed conditional permission for raising said construction in the area. However, when the matter came up before the same bench which stayed the construction on 06.07.2015, the Hon'ble bench expressed its inability to agree with the order vacating the stay and therefore directed the registry to place the matter before the Hon'ble Chairperson and if found necessary, a larger bench should be constituted for adjudication of the given issue.

The matter was then placed before the Chairperson who referred to Section 21 of NGT Act, 2010 and Rules 3 and 5 of the NGT (Practice and Procedure) Rules, 2011, which deal with powers of the chairperson to constitute benches, direct cases to be heard by a larger bench, distribute business amongst different benches, and also direct that the decision of the chairperson in respect of these powers shall be final. The tribunal held that the instant matter could not be treated as a reference under section 21 for two reasons. First, since both the orders passed in the petition which are sought to be finally adjudicated were interim orders by different benches, which operate only till the final decision of the original application, therefore they need not be termed as conflicting orders. The

Tribunal while relying upon the principles laid down by the Hon'ble Supreme Court took the view that interim orders are temporary arrangements only to ensure that matter does not become infructuous or fait accompli before the final hearing, and essentially merge into the final judgment of the court. Second, both orders were appealable under Section 22 of the Act, and none of the parties have invoked appellate jurisdiction of the Supreme Court.

The matter was thereby disposed of since the parties had not challenged the interim orders, and there was no conflict of opinion between the benches which was equally divided between members of the same bench. The Tribunal further directed that the matter should be heard by the same bench which was dealing with the matter and till the final disposal, the interim order of 26th November, 2015 allowing construction with certain conditions will continue to operate.

Sajeev Bharadwaj
v.
The State of Telangana & Ors.
Application No.207/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Illegal Rearing of African catfish, ecological imbalance
Decision: Dismissed
Date: 27 July, 2016

JUDGMENT

This application was filed against the alleged environmental violations committed by persons illegally involved in the rearing of banned African Catfish in various villages in Mahbubnagar district of Telangana. The cultivation was being done on agricultural lands without seeking conversion for non-agricultural purposes. Further, the applicant submitted that the rearing was done in an unprotected manner where there was a possibility of the fish escaping into the adjacent Krishna River waters and other water bodies, causing grave threat to the existence of indigenous aquatic species, which would lead to disturbance of ecological balance. It was also submitted that such rearing was being continued despite being banned by the Central and State Government. Therefore, the applicant prayed for appropriate action against those involved in the illegal rearing of catfish.

In their reply, the respondents stated that the Catfish culture was only limited to some villages and not as many as were alleged by the applicant. Further, the concerned authorities had dismantled the ponds rearing Catfish in 2013 and farmers had started rearing permitted Pangas fish. It was also affirmed that efforts were being made to completely eradicate the African Catfish Culture and initiating action against those involved.

The Tribunal noted that the State of Andhra Pradesh had issued G.O dated 04.10.2005 banning the seed production, transportation and marketing of the said species. It was found that because of its quick economic returns, this exotic species of fish was found cultivated illegally, in spite of the ban imposed on the cultivation, trade and business of the catfish. On perusal of the pleadings, the Tribunal was of the view that the Department of Fisheries was taking efforts to curb the menace of rearing and marketing of banned catfish but these measures were not adequate. However, no specific orders could be given for the same. Therefore, the only directions given to the authorities/respondents was to regularly monitor the Catfish ponds and strictly implement the requisite G.O dated 04.10.2005 and book criminal cases against the offenders. Directions were also given to the Commissioner of Fisheries to regularly review the matter, with the assistance of the General of Police/Superintendents of Police, in order to completely eradicate the menace.

With the above directions, the application was disposed of.

Palanisamy Shanmugam
Vs.
State Environment Impact Assessment Authority & Ors.
Application No. 163/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: EC
Decision: Dismissed
Date: 28th July 2016

JUDGMENT

The Tribunal admitted this application, as it was satisfied that there existed a substantial question connected to and concerned with the environment and ecology to be decided by the Tribunal. The respondent, SEIAA, submitted a copy of the EC granted to the Slum Clearance Board for the proposed project. In view of the occurrence of subsequent event of granting EC, the prayer in the application did not survive.

Accordingly, the application was closed.

C. Karthik
v.
The Member Secretary& Ors
Application No.202/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Construction, CRZ
Decision: Dismissed
Date:28 July, 2016

JUDGMENT

This application was filed seeking a direction against the Rameswaram Municipality to take immediate action to stall the construction being made by the Ayothiraj and Santhi ('5th and 6th respondents'). Apart from this, applicant was also against the construction by the 7th respondent in another survey. This was because both the buildings being renovated were situated within the Coastal Regulation Zone area. However, the respondents submitted that the Municipality had approved the building plans by an order dated 07.09.2011.

The Tribunal stated that if at all anybody was aggrieved by such approval, it was for them to work out a remedy in accordance with the law as putting of civil construction was not within the purview of the Tribunal as it was not covered under any of the 7 Acts enumerated under the Schedule to the National Green Tribunal Act, 2010.

In view of the same, the Tribunal confirmed that it had no jurisdiction and accordingly, the application was dismissed.

M/s. SAP Group of Company
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 137/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Packaged Drinking Water, Prohibited Category
Decision: Allowed
Date: 1st August 2016

JUDGMENT

This application arose from the order passed by the Tamil Nadu State Pollution Control Board under S.33-A of the Water (Prevention and Control of Pollution) Act, 1974, directing closure of the appellant unit and disconnection of electricity, following an inspection by the Board which found that the manufacturing of packed drinking water in the said unit was being carried on despite the restrictions imposed by the Tribunal. It was also clarified that the appellant unit was categorized under Category 1, which is a prohibited category.

The appellant submitted that the categorization under Category 1 was a clerical mistake and that the appellant was entitled to maintain the machinery for protection of membrane under Category 2, instead. He also confirmed that he would not carry out any other activity except maintenance of machinery and would scrupulously follow any order granted by the Tribunal.

In view of this matter, the Tribunal directed the appellant to make such request to the Board, which was further directed to pass appropriate orders within 2 weeks from the date of receiving such a request. The Board was also directed to make periodical inspection and verify the activities of the unit to see that the applicant did not carry on any manufacturing activity.

With the above direction, the appeal was ordered.

Puduchery Environment Protection Association
Vs.
Union of India Forests & Ors.
Appeal No. 123/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Amendment of EC, Critically Polluted Area
Decision: Allowed
Date: 1st August 2016

JUDGMENT

The appellant had approached the Tribunal in an appeal challenging the amendment of the EC granted to the project proponent on the ground that the project for which the extension of EC was granted, was situated within the critically polluted area of Cuddalore and therefore, the grant of such EC by the SEIAA was not valid. The EIA Notification, 2006 made it clear that where a project site is situated within 10 km of a critically polluted area, even if the project is considered by the SEIAA, it has to be considered by the MoEF & CC.

The Tribunal allowed the appeal and set aside the amendment of EC granted by the SEIAA however it clarified that there was no bar on the part of the project proponent to approach the MoEF & CC for the grant of EC.

VGN Mahalakshmi Nagar Owner – Residents Welfare Association
Vs.
The Superintending Engineer (TNEB) TANGEDCO & Ors.
Application No.78/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Electricity Lines, Tree felling
Decision: Disposed
Date: 1st August 2016

JUDGMENT

This application was filed by the President of a Residents Welfare Association, for the issuance of a direction against the respondents to consider their representations and to direct them to lay electricity lines through underground cables without cutting trees.

With regard to the laying of the overhead cable, the matter was a policy of the Government and the Tribunal could not interfere with the same. However, with regard to the pruning of trees which was affecting the growth of trees, the Tribunal was of the view that the Department should be careful in pruning the branches and the main trunk portion and lower branches should not be touched upon; it should be done scientifically and the execution should be in the presence of supervising officers concerned.

The respondents were therefore, directed to take necessary action in preventing damage to the trees and plant more trees in the said area. It was also open to the applicant to make necessary representation to the electricity department to not damage the trees. In view of the above, the application was disposed of.

Gopaakrishnan Nair Puthencruz
Vs.
The Kerala State Pollution Control Board & Ors.
Application No. 56/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Toxic Gases, Chemical Plant, Consent
Decision: Disposed
Date: 2nd August 2016

JUDGMENT

This application was filed for a permanent injunction against the project proponent from conducting production operations in their plant at Karimugal and for a mandatory injunction against the same, to establish a buffer zone of at least 100m width around the company, apart from awarding compensation. The application also stated that by virtue of the manufacturing process carried out by the respondent, there was emission of toxic gases, which had been affecting the applicant and his family, and that there was already a prosecution against the project proponent before the Magistrate Court, under the Air (Prevention and Control of Pollution) Act, 1981 for unauthorized installation of the plant.

The project proponent, in the reply, stated that the land used by the factory was acquired and handed over to M/s. Carbon & Chemicals India Ltd. by the Government of Kerala, for the purpose of setting up of a plant for production of carbon black and that the raw material for the manufacturing of carbon black was a by-product of petroleum refinery, which was found to be beneficial to the Government. The respondent also submitted that it had taken over the company and the factory premises by virtue of the Kerala High Court's order and at that time, the Board, after inspection and after being satisfied that the emission levels were within the standard limits prescribed, had given Consent to Operate. When the project proponent decided to expand its production capacity, the MoEF & CC had granted EC and the Board granted Consent for the same, along with permits for installation of a new plant, approval of the site plan and a No Objection Certificate. It was also submitted that as per the Assessment Register of the Panchayat, the applicant did not own any house within the limits of the Panchayat and that during the establishment of the factory, there were no residential houses in the vicinity of factory. With regard to the same, the original suit was dismissed as the applicant had failed to comply with the direction in the suit and the plea of the applicant's contention of residing within 20m was also denied.

In its reply, the Board stated the respondent had complied with most of the conditions and that all the pollution control systems and air quality monitoring were in place. However, the respondent was directed to make arrangements for uploading the results of continuous air monitoring data to the Board.

In view of the stand taken by the Board, the Tribunal disposed the application with the above directions.

Nimmala Ankaiah
v.
Union of India & Ors.
Application No. 216/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Eco-Sensitive Zone, Bird Sanctuary, Red Category projects
Decision: Allowed
Date: 2 August, 2016

JUDGMENT

This applicant by way of this application challenged the projects of the Respondent No. 6 and 7 (project proponents) for establishing Medical College and Super Specialty Hospital and High precision CNC Machines manufacturing project respectively in violation of the ESZ Notification dated 26.06.2015 with respect to the Pulicat Bird Sanctuary located in Andhra Pradesh and further seeking directions to the respondent authorities not to grant any consent/permission/clearance to any industries, activities or processes in violation of the said Notification. The notification declared an area of 2 km from North to South all along the western Boundary of the sanctuary as Eco Sensitive Zone. The ESZ Notification prohibited establishment of any new polluting or highly polluting industry in ESZ apart from production of any hazardous substance and regulating pollution from existing units as per environmental regulations.

The case of the applicant was that the State had allocated lands for establishment of the said projects within the ESZ limits of the Sanctuary in violation of the said Notification as the projects were earmarked as Red category which was a prohibited activity under the said Notification. The applicant further emphasized on the significance of the Sanctuary claiming that the same was identified as an Important Bird Area (IBA) and consist of the second largest brackish water lagoon in India. It was further stated that the Government had notified the ESZ pursuant to the orders of the Hon'ble Supreme Court in the Goa Foundation matter.

In response to the application, the Andhra Pradesh Industrial Infrastructure Corporation Ltd. (Respondent No. 4) stated that the Notification did not completely ban all the activities/industries and it was only the polluting and red category industries which were prohibited. However, it was for the pollution control board to determine as to whether the proposed projects were Red category and whether the same was permissible in the said area. It further stated that the project would only be allowed subject to consent from the Board. The Respondent No. 6 (project proponent) alleged that the application was pre-mature as only the allotment was being made and the conveyance was yet to be materialized. The Board in response stated that it had not received any application for consent from either of the respondent. However, it clarified that the projects of the respondents were Red category industries. The applicant in response referred to the GO's

dated 28.02.2015 and 22.05.2015 issued by the Government to prove that the allotment was specifically made for establishment of the said projects.

The Tribunal perused the ESZ Notification having detailed description of the boundaries of the ESZ which showed the lands allocated to the project proponents falling within the ESZ of the Sanctuary. The Tribunal noted that the Notification prohibited establishment of any new industrial, polluting and highly polluting activity within the limits of ESZ. The Tribunal concluded that the projects of the respondents were red category which were prohibited under the ESZ.

The Tribunal noted that the notification was issued under the Environment (Protection) Act, 1986 having statutory effect which was required to be implemented in letter and spirit. The Tribunal relied upon the GO's of the Government which clearly spelt out that the allotment was made for the purposes of the establishment of the said projects and found that the said GO's were against the intent and purport of the ESZ Notification and could not be allowed to be implemented. The Tribunal directed for an order of injunction against the respondent authorities from permitting any such prohibited activities within the said ESZ, however, it made it clear that the said lands could be allotted by the Government for any permissible activities by issuing fresh GO's to that effect.

Accordingly, the application was allowed.

K. Savad
v.
MoEFCC & Ors

Application No. 117/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Ecologically Sensitive Area, Environment Clearance, Construction
Decision: Dismissed
Date: 2 August, 2016

JUDGMENT

This application was filed for a declaration that the building permit approvals in respect of the land situated in the Kozhikhode District, an Ecologically Sensitive Area, and granted by the 14th respondent to the 18th and 19th respondents was void ab initio and to direct the respondents 15-19 to jointly and severally restore the ecology of the schedule property in its original shape as existed before the commencement of construction and finally, to direct the concerned respondents to take appropriate action against the 15th to 19th respondents for putting up illegal and unlawful constructions without seeking prior EC and in violation of the conditions prescribed in the Environment Clearance ('EC').

It was admitted that the applicant had filed an earlier application seeking prevention of ongoing construction, after which the Hon'ble Tribunal passed an interim order. It was the case of the applicant that the respondent's application for vacating the interim order involved reference to the development agreement signed by the 18th and 19th respondent and that after seeing such agreement, the applicant found that the schedule property situated in the village in question was covered by the Ministry of Environment, Forests and Climate Change ('MoEFCC') directions which prohibited anyone from carrying on construction activity in that village. He also stated that no clearance could be given without Environment Impact Assessment ('EIA') and no sanction for construction of buildings exceeding 20,000 sqm. would be permitted.

Since the prayers made in both applications were the same, the Tribunal, while dismissed the earlier application had held that there was no bar for the Municipality from issuing permit and neither was there a necessity for EC under the EIA Notification, 2006. It was not open to the applicant to re-agitate the matter on the same subject-matter and in light of the same, the applicant was not entitled to any relief. Accordingly, the application was dismissed.

Baby MG
v.
The State of Kerala & Ors
Application No.214/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Reserved Forests, Non forest activities
Decision: Dismissed
Date: 2 August, 2016

JUDGMENT

This application was filed praying for quashing of a certain Government Order and declaring it as illegal, and also directing the Additional Principal Chief Conservator of Forests ('3rd respondent') to register a case against the Officer in-charge of the State of Kerala. The applicant was aggrieved as the various lands were allotted to the Municipality for developmental activities by way of Government Orders ('G.O.') and such lands were classified as Reserved Forests, thereby, not giving the Government any right to use the land for non-forest activities.

A reference to the Government Order showed that the Forest Department had willingly agreed to transfer 75 cents of land to the revenue department, which was to be used to construct new flats and a new forest complex. Following this application, the respondents collectively stated that the Government had decided to replace the Timber Depot located in the alleged forest land and shift it to a different location and to transfer the land to the Municipality for township development. During the meeting with the High Power Committee, it was submitted that no alternative site could be found and therefore, it was not possible to shift the Timber Depot and the Forest Station Complex. In these circumstances, the Government decided to review the impugned G.O, in view of which, the Tribunal found no useful purpose in keeping the application pending. However, it did direct the Government to take effective steps for the purpose of reviewing the G.O and passing appropriate orders.

Accordingly, the application was dismissed.

Subhas Datta
Vs.
State of West Bengal & Ors

Original Application No. 24/2014 (EZ)

Coram: Mr. Justice S.P. Wangdi, Prof. Dr. P.C. Mishra
Keywords: Coal Power Plant, River Pollution, Polluter Pays Principle, Restoration, Compensation
Decision: Allowed
Date: 2nd August, 2016

JUDGMENT

The application was filed by the applicant raising concerns over the pollution of rivers Chandrabhaga and Bakreshwar caused due to the discharge of fly ash laden water from the ash pond of coal based thermal power plant situated in Bhirbhum district of West Bengal. The applicant pleaded that the pollution had affected the aquatic life, agriculture and health of the people in the area. The applicant contended that discharge and dumping of fly ash was being done in violation of the provisions of Air Act, 1981, Water Act, 1974 and Environment (Protection) Act, 1986 and also the guidelines with regard to utilization of fly ash issued by the MoEF from time to time. The applicant, therefore prayed for directions to not allow any fouling of the river, to stop discharge of fly ash slurry into the river, to manage the existing fly ash pond and to take adequate measures to keep the said area free from environmental pollution. The applicant also prayed for restraining illegal mining on the river bed.

In response to the said application, the project proponent, the West Bengal Power Development Corporation, admitted that due to overflow of the ash pond, the contaminated water was being discharged into the river. Thus, the said respondent stated that although there was need to construct a second ash pond, the proposal for the same could not be finalized due to certain issues with the Corporation. The Tribunal directed the Member Secretary, Pollution Control Board, to file a status report regarding the same, which clarified that a huge quantity of fly ash was accumulated on the river bed and the river water in the downstream was also polluted, in view of which, the respondent was directed to remove the entire deposit of fly ash from the given area. In order to examine the condition of the river, the CPCB Regional office was directed to make a field visit which in its report highlighted certain issues including the damage to the river ecology due to ash deposition, deterioration in the water quality, loss of biodiversity, loss of livelihood of people living in the surrounding areas alongwith recommending for Zero Discharge with immediate effect.

The Tribunal observed that as per the EC granted in the year 1992, the power plant had a single ash pond constructed to deposit ash only for three units of 210 MW each for a span of 15 years. However, subsequently two more units were constructed but the disposal of fly ash continued to be in the single ash pond already in place. Realizing that the respondents had violated the EC conditions, the Tribunal issued a notice to the respondent to show cause as to why environmental compensation amounting to Rs 5 crore should not be imposed for environmental degradation to the rivers and its surroundings in view of the Polluter Pays Principle. It was also found that the respondent did not have valid consent to operate and the unit was operated illegally for a period of six months. The Tribunal also noted that a retrospective consent to operate was granted by the Board which was invalid as per the statutory provisions which provide only for a prospective grant of consent i.e prior to the operations of the unit. Thus, vide an interim direction, the tribunal imposed penalty of Rs 25000/- on the Member Secretary and concerned Engineer of the Board. Further, in a report submitted by NEERI it was observed that although the ash pond water met the prescribed National standard, the plant was still required to reach zero discharge and 100% fly ash utilization.

The Tribunal observed that Project Proponent had undertook various mitigation measures and efforts to restore the environment for the area as per the recommendations made by NEERI and Dr. Kalyan Rudra, Chairman of the State Pollution Control Board and the Tribunal was satisfied with the same. On the issue of imposition of penalty, considering that the Project Proponent had spent a huge amount of money on restoration and mitigation measures, the Tribunal decided not to impose any compensation upon the said respondent. However, it gave certain directions to develop a second fly ash pond and take adequate measures to protect the environment. The Tribunal also noted that large scale pollution was done by a Government funded industry and therefore directed the project proponent to pay litigation costs of Rs 50,000/- to the applicant.

Accordingly, the application was disposed of.

Janam Kosam
v.
The State of Telangana & Ors
Application No. 36/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Air Pollution
Decision: Dismissed
Date:3 August, 2016

JUDGMENT

This application was filed with a prayer to call for records relating to the regularization of a few plots in Chandanagar, GHMC West Zone, Hyderabad, from the Greater Hyderabad Municipal Corporation ('GHMC'), 2nd respondent and to cancel all their building permissions. According to the applicant, three persons had encroached and illegally converted green areas and sites for parks into plots, leading to invasion of residents' lung space and affecting the free air. Further, it was submitted that these land grabbers had also conned innocent purchasers.

Later, it was stated that the GHMC had issued notices to respondents 4-6 directing them to vacate the plots against which they moved the High Court, which granted them an interim order and therefore, their possession was not disturbed. In view of the same, the prayer made in the application became infructuous. Subsequently, the Respondents 4-6 brought out some facts for the Tribunal's consideration, stating that the layout had not been formed yet and by virtue of the communication of Hyderabad Urban Development Authority, wherein it stated that the layout development works should be completed within a year, the formation of this layout stood lapsed. In the absence of the approval of the layout within the due date, there was no question of leaving any open space for amenities and therefore, it could not be said that the purchase made by the respondents was against the law. The respondents also submitted that their vendor had purchased the property in 2007, which was beyond the date of the notification and their regularization was approved in 2012, after which they purchased two plots jointly in 2013 along with obtaining building permission. Therefore, it could not be said that they were unauthorized purchasers. Further, they also stated that the present application was barred by limitation.

Considering the above replied, the Tribunal stated that there was no impediment in their view as far as the respondents were concerned to have the property purchased in accordance with law and the layout being approved by way of regularization. With regard to the open space being sold, it was for the parties to work out their remedy as in so far as it related to the respondents, their right over the property could not be assailed by anyone.

In view of the same, the application was dismissed with liberty to the applicant to work out his remedy in the manner known to law. The Tribunal clarified that the respondents could not termed as encroachers as the order of regularization was made validly under the existing statutory rules.

Mr. Kashinath Jairam Shetye & Ors.
Vs.
Joseph M. Pereira & Ors.

Application No. 182/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Illegal Construction, Non-Compliance, No Development Zone, Demolition
Decision: Disposed
Date: 3rd August 2016

JUDGMENT

This application was filed seeking a direction against the respondents to demolish the alleged illegal structures in Survey No. 150, 151 and 152 of Arpora Village so as to bring the land to its original position. Directions were also sought under Section 26 of the National Green Tribunal Act for alleged willful disobedience of the order passed by the Tribunal in October 2015.

During the course of the hearings, the Tribunal noted that the High Court of Bombay at Goa Bench in Writ Petition No. 325 of 2016 had passed an interim order which clarified that interim relief would only apply to the petitioners before it and not to any other individual or entity who was either constructing structures or running commercial activities. However, the Tribunal opined that the Order of the High Court did not restraint the Tribunal from considering the Application on its merit.

On merit, it was found that the GCZMA could not have granted permission for construction of temporary or permanent huts in the area, which was declared and came within the No Development Zone and the Tribunal declared that all permissions granted by the GCZMA would not be legally sustainable. In the present matter, the GCZMA submitted that all the licenses granted by it had been revoked and it was further enforcing the Coastal Regulatory Zone Rule of 2011. It was brought to the notice of the Tribunal that the GCZMA had passed an order in May 2016 ordering demolition of the structures put up by the persons out of which respondent No. 1, Mr. Pereira was one such person. Subsequently respondent No. 1 preferred a regular appeal for the same before the Tribunal.

As far as the present application was concerned, the Tribunal was of the opinion that the order passed by the GCZMA in May 2016 was in pursuance to the complaint lodged by the applicant and the Tribunal's orders were also in aid of the relief sought by the applicants. The Tribunal noted that the proceedings had come to a logical end when GCZMA took appropriate action in accordance with law i.e. ordering demolition of shacks and construction of structures. Thus, the grievances of the applicants had been fully answered by the GCZMA and called for no further orders from the Tribunal.

Accordingly, the application was disposed of with no order as to costs.

Mr. Piety Fernandes & Ors.
v.
The State of Goa & Ors.
Appeal No. 03/2016

AND

Village Panchayat of Assoida
v.
Goa State Environment Impact Assessment Authority & Ors.
Appeal No. 2/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, Construction, Rail Freight, Show cause notice,
Decision: Disposed
Date: 3rd August 2016

JUDGMENT

This appeal was filed questioning EC granted to the respondent No. 3 for construction and laying of Rail Freight Terminal on 16/12/2015 which was subsequently amended on 23/12/2015. In reply to the Appeal, the State respondents submitted that SEIAA had considered the complaint submitted by the appellant on 04/01/2016 and in pursuance to which it had issued a show cause notice to the 3rd respondent, directing it to reply and answer the allegations made in the complaint and also show cause as to why the impugned EC granted should not be cancelled, recalled or annulled. The Respondents also submitted that the fact that the SEIAA had taken cognizance of the complaint and initiated action, the SEIAA may be given liberty to hear the appellants and the project proponent on the complaint and take a decision. Further, it was submitted that SEIAA would not hesitate to cancel the EC granted if it was found that the EC was not justified for the project. The Respondent No. 3 submitted that it was still in process of acquiring land and therefore the appeal action was premature.

Subsequently, the Tribunal was of the opinion that the present appeal need not be kept pending for the reason that the complaint submitted by the appellants had been taken cognizance of by SEIAA who had initiated the requisite inquiry. The Tribunal also noted that when SEIAA was the authority which could pass an order and there was a statement at Bar on behalf of the SEIAA and other respondents that if the project proponent's explanation was not found acceptable, the SEIAA could cancel or recall the EC granted, it was satisfied that the appellant's grievances would be fully addressed by the order of SEIAA itself.

In light of the above circumstances, the appeal was disposed of with the opinion that independent decision by the Tribunal was not necessary and giving absolute authority to SEIAA to make the decision which it thought would be necessary. The Tribunal reserved liberty to the appellants to question the order of SEIAA if it resulted in an adverse order to them.

Accordingly, the appeal was disposed with no order as to costs.

A. Latchathipati
Vs.
The Tamil Nadu Pollution Control Board & Ors.
Application No. 63/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Closure, Show Cause, Consent, Siting
Decision: Allowed
Date: 4th August 2016

JUDGMENT

This application was filed for a direction against the Tamil Nadu Pollution Control Board to issue a closure order and stop the power supply to the units run by private respondents (Respondents No. 5, 6 & 7) and to direct State authorities to proceed against the 5th respondent unit to ensure implementation of compliance.

In a status report filed by the District Environment Engineer, it was stated that the 5th respondent unit had not obtained consent from the Board, due to which the show cause notice was issued. Subsequently, 70% of the unit's activities had been shifted to another site and only small scale activities were said to be carried out. However, these activities required consent as well and action was taken by the Board in the form of another show cause notice.

In view of the same, the Tribunal directed the Board to take appropriate action including the closure of the 5th respondent unit because of its failure to obtain consent.

Considering that the 6th and 7th respondents had closed their units, no order was required against them. However, the report also mentioned 6 more units which were operating in the locality without consent and the Board had taken effective steps to issue notices effecting closure. Therefore, the Tribunal directed the Board to take immediate action for the purpose of closure of such units and also decide as to whether the units were situated in residential or industrial area.

With the above direction, the application was disposed of.

Mr. Duraiswamy
v.
The Assistant Environmental Engineer & Ors
Appeal No. 104/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Noise Pollution
Decision: Allowed
Date:4 August, 2016

JUDGMENT

This appeal was directed against an order of the Appellate Authority, which had, on an inspection by the District Environment Engineer ('DEE'), had allowed the unit to operate on certain conditions.

The State Pollution Control Board ('Board') under the Air (Prevention and Control of Pollution) Act, 1981 had initially issued the 3rd respondent, an owner of a sawmill, a show cause notice as to why the carpentry activity going on in the residential area should not be closed. The Appellate Authority set this order aside and the matter was remanded back to the Board. Post the remand, the noise level in the sawmill was found to be exceeding the permissible limit after which, the Board issued a direction to the respondent to shift the carpentry activities away from the residential area. The Appellate Authority also allowed such a direction to be passed, which lead the respondent to file a writ petition in the Madras High Court, in which he gave an undertaking to not operate the grinding machine. Subsequently, the matter was remanded back to the Appellate Authority on the order of the High Court to pass appropriate orders.

It was contended by the appellant that the Appellate Authority had been incorrect in allowing the unit to operate despite violation of the Tamil Nadu Regulation of Wood Based Industries Rules, 2010. It was argued by the Board that since the unit did not have Consent to Operate and was in violation of the abovementioned Rules, the unit had been closed.

The Tribunal, in the light of the above contentions, set aside the order of the Appellate Authority, with directions to the 3rd respondent to obtain requisite permissions in accordance with law.

Mrs. Suhasini Surendra Govekar
Vs.
Mr. Dominic Almeida & Ors.

Application No. 24/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Illegal Construction, CRZ, No Development Zone (NDZ)
Decision: Disposed
Date: 4th August 2016

JUDGMENT

This application was filed seeking a direction against the respondents to demolish the shops, compound wall and hotel building constructed in Survey No. 72/37 of Village Anjuna, Bartez Goa constructed by the private respondents in CRZ-III Zone within 200 meters of HTL lying in NDZ. The applicant also sought directions to the GCZMA and Village Panchayat not to issue any commercial NOC for shops, hotel/resort in the name and style "COLOURS" in the aforementioned survey of the village.

In reply to the application, Respondent No. 3 (GCZMA) submitted that it had already taken cognizance of the complaint by the applicant and issued a show cause notice to Respondent Nos. 1 and 2. It was also submitted by GCZMA that they had referred the complaint to the Inquiry Committee to inquire into the nature of allegations and the fact of situation. On behalf of Respondent Nos. 1 and 2, it was submitted that they had filed their objections which was pending before the GCZMA. On taking note of this situation, the Tribunal adjourned the matter to enable GCZMA to reach a final decision. Subsequently, the period for which the GCZMA was constituted, expired and the constitution of the new committee by the MoEF was awaited. The Tribunal opined that even if the GCZMA by expiry of time had lost its existence, the State Environment Department was the statutory authority who had ultimate control for enforcement of the statutory provisions in the matter relating to CRZ Regulations should have stepped in to take appropriate action in the absence of the GCZMA. In such circumstances, the Tribunal directed the Environment Department of State of Goa to initiate proceedings from the stage at which GCZMA had stopped and pass appropriate orders within a month. In order to avoid any kind of delay, the Tribunal fixed 19th August, 2016 as date for the Environment Department to proceed with the inquiry and directed that if GCZMA was constituted by that date then this order was to be complied by the new GCZMA in office.

Accordingly, the application was disposed with no order as to costs and reserving liberty to the applicant to question the order of the GCZMA if it was against her.

R. Janakiraman
v.
The Principal Secretary, Department of Environment & Forests
Application No. 228/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Immersion of Idols, Water Bodies, Water Pollution
Decision: Disposed
Date: 5 August, 2016

JUDGMENT

This application was filed seeking a direction against the respondents to ban immersion of idols containing Plaster of Paris and other chemicals in the Hoganekkal falls and the river bank of Cauvery in Dharmapuri district, Tamil Nadu, as this lead to blocking of the natural flow of water resulting in stagnation and breeding of mosquitoes as well as serious health hazards and damage to the ecosystem and bio-diversity. Further, the CPCB had reviewed the impact caused by the idol immersion, which showed increase in acid content in water, increase in Total Dissolves Solids and Dissolved Oxygen as well as increase in heavy metal content.

The Board replied that it had intimated a list of water bodies for the immersion, which was published in the newspapers in 2014 and the decision to allow immersion only at designated points was sent to the Police of Dharmapuri district to ensure the same. Further, the Board stated that it had collected water samples from the Hogenakkal falls, which had shown that all the parameters were within the standards.

The Tribunal noted that the immersion of idols made with PoP and decorated with hazardous chemicals, paints and colours in the water bodies was a cause of concern and the issue was also dealt with by the Bombay High Court in the case of Janhit Manch vs The State of Maharashtra & Ors, wherein the authorities were directed to evolve guidelines at national level in this regard. Pursuant to the same, the CPCB had framed detailed guidelines in June, 2010 on the immersion of idols which were in force. It was also observed that the District administration of all districts in the State was taking action every year to regulate the immersion of Ganesh idols. However, the Tribunal relying upon the judgment of the Principal Bench in the case of Sureshbhai Keshavbhai vs State of Gujarat & Ors, noted that there could not be a complete ban on the PoP made idols since no scientific study with respect to the impact of the immersion of PoP made idols on water quality had been undertaken.

Considering that the Tribunal did not have any information as to whether the Board had undertaken any scientific study on the effect of immersion of idols made of PoP which would allow the authorities to issue appropriate directions in accordance with the powers vested under the Water Act, it gave directions to the Board to conduct the study

and advise the State Government for total imposition of ban on making idols with PoP based on the same. In the meantime, the Board was directed to reiterate the strict implementation of the CPCB guidelines already issued with regard to use of artificial dyes, paints and chemicals. The State Government and Board were further directed to communicate the guidelines to all the District Collectors, Environmental Engineers and local bodies and create awareness among the public on the damage caused to the environment and pollution of water bodies due to large scale immersion of idols and encourage them to use the idols made with natural materials and immerse the idols only at designated immersion points in view of the impending Vinayagar Chathurthi festival and the puja material to be carefully disposed of as per the Solid Wastes Management Rules, 2016. The Board was further directed to monitor the water quality at the immersion points before, during and after immersion and display the results on its website for public awareness.

With the above directions, the application was disposed of.

Pilerne Citizens Forum
Vs.
Chief Secretary, Government of Goa & Ors.

Application No. 139/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Tree Cutting, Forest Destruction, Private Forests, Double jeopardy
Decision: Disposed
Date: 5th August 2016

JUDGMENT

This application was filed against twenty-two individuals for the alleged act of cutting trees and destructing forests in the area of Pilerne village, Bardez Taluka, Goa. The bone of contention in the application was that there was total negligence on part of Respondent No. 12, the Forest Department, in implementing the provisions of Forest Act which allowed destruction of forest by the Communidade of Pilerne, (Respondent No. 4). In reply to the application, the Forest Department filed an affidavit and appended with it a plan demarcating all private forests in Survey Nos. 30 and 31 of Pilerne Village and stated that an area of private forests measuring 28,500 sq.m was identified and demarcated as private forest. Respondent No. 4 admitted the statement put forth by the Forest Department and stated that the area marked as private forest under Survey No. 31/1 of village Pilerne was 26,666 sq.m. out of total area which was 83,092 sq.m. It was further submitted by Respondent No 4 that the development was undertaken in the settlement zone and the respondent had maintained the area under private forest. The Respondent relied on two letters issued by the Chief Town Planner and Assistant Conservator of Forests to substantiate that the development was carried out in land which was beyond 26, 666 sq.m.

In view of the above contentions, the Tribunal noted that the matter was verbally settled considering that the 4th respondent had agreed to ensure prevention of private forest to the extent of 28,550 sq. m. However, the applicant specifically prayed for appropriate actions against the 4th respondent for indulging in cutting of trees and contravening the provisions of the Forest Act. The Tribunal questioned the Forest department about cutting of trees by Respondent No. 4 thereafter which the Forest Department had carried out investigation and had come to the logical conclusion that there was felling of trees in non-forest area and not in the forest area, as alleged by the Applicant. The Applicant had also lodged an F.I.R. on 19/03/2015 alleging felling of trees in the forest as well as non-forest area. The Tribunal noted that the reports and the records of the Forest Department was subsequent to FIR and was dated 15/12/2015. The Tribunal also noted that the Forest Department had carried out investigation and had also imposed punitive action by virtue of powers conferred to it under the provisions of the Forest Act. Thus the Tribunal

opined that no further action was required from its side as it would amount to double jeopardy. However, the Tribunal accepted the contention of the Applicant that the plan submitted by the Forest Department needed to be taken on record by the Revenue Department and accordingly the Tribunal directed the Forest Department to forward the map and affidavit to the local body for appropriate action.

Accordingly, the application was disposed of with no order as to costs.

Dileep B. Nevatia
Vs.
Union of India& Ors.

MA No. 140/2015, MA No. 144/2015, MA No. 239/ 2015
In
Original Application No.27/2015 (WZ)

Coram: Hon'ble Shri Justice U.D. Salvi, Hon'ble Dr. Ajay A. Deshpande
Keywords: Vehicular Pollution, Emission Norms for automobiles, Ambient Air Quality
Decision: MA allowed, Application disposed.
Date: 08th August, 2016

JUDGMENT

This application was filed with respect to deterioration in the air quality caused due to the poor quality of gasoline or diesel supplied by the refineries and the consequent discharge of harmful pollutants by the vehicles, D.G. sets etc. using such gasoline or diesel supplies which has violated the ambient air quality standards thereby adversely affecting the health of the people all over the country. The applicant contended that the cause of action in the instant matter has arisen because of the failure of the MoEFCC and CPCB to ensure implementation of the NAAQ standards in terms of the powers conferred under section 5 of the Environment (Protection) Act, 1986 and section 31 (A) of the Air Act.

The respondents filed various preliminary objections regarding the maintainability of the original application on the ground that there is no cause of action and the application does not indicate any substantial question relating to environment within the ambit of section 14(1), that the Hon'ble Supreme Court is already seized of the matter as it is hearing petition with respect to implementation of BS IV, BS V and BS VI emission norms across the country, that the reliefs sought were related to Motor Vehicles Act, 1988; SEZ Act, 2005, Essential Commodities Act, etc., which are not part of Schedule I of the NGT Act , that the reliefs are in nature of policy making and is within the exclusive domain of the Executive and that the applicant has not impleaded Public Sector Oil Marketing Companies and Joint Sector Refineries which were necessary party to the application. Based on the said contentions, the respondents argued for dismissal of the application.

The respondents relying upon the Expert Committee report on "Auto Fuel Vision & Policy 2025" and road map indicating year-wise implementation of emission norms argued that the Air Act cannot be invoked in the instant matter since under the provisions of Section 16(2)(h) of the Air Act, 1981, the CPCB can only fix standards for the quality of air and not the standards of fuel emissions by vehicles which is only governed under the Motor Vehicles Act, 1988, not within the jurisdiction of the Tribunal. The Respondents further submitted that the applicant has an alternative remedy to submit his

suggestions/objections to the Draft Notification issued by the Government of India to prepone the schedule date for implementation of BS-V and BS VI emission norms.

The Tribunal observed that the standards for emission or discharge of environmental pollutants from automobiles are covered under the provisions of the Environment (Protection) Act, 1986 and Air Act, 1981. It further continued to observe that the MoEF in exercise of its powers under the Environment (Protection) Act, 1986 has also notified standards for emission or discharge of environmental pollutants from the motor vehicles under Rule 3 [Schedule IV] of the Environment (Protection) Rules,1986. Thus, it held that the CPCB and MoEF are the regulatory authorities to ensure implementation of the said standards and any failure on their part would constitute a substantial question under section 14 of the NGT Act.

While all the other contentions of the Respondent were negated and the reliefs prayed in the application were found well within the domain of the NGT Act, however, considering that the issue with respect to BS-VI emission norms is being dealt by the Hon'ble Supreme Court in Writ Petition (C) No.13029 of 1985, the Tribunal decided not to deal with the present application on the principles of judicial discipline. Consequently, the Miscellaneous applications were allowed while disposing of the original application without costs.

D. Gopinath
v.
The District Collector & Ors
Application No. 131/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Savudu, Lake, Quarrying
Decision: Disposed
Date:9 August, 2016

JUDGMENT

This application was filed to restrain the District Collector from granting permission to any person or group of persons or company to remove "savudu" (a fertile sediment deposited on the tank/lake bed) from Maduravasal Lake for commercial purposes in future and to direct the respondents to assess the damage caused to the lake by the excessive excavation of soil by a quarry operator. It was the case of the applicant that the permitted a 3rd party had not only removed the soil beyond the prescribed depth from the Lake but also from the adjoining areas, illegally going beyond the limits, which was against Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

According to the Public Works Department ('PWD') the license holder of the Maduravasai quarry excavated only in the approved area as per the terms and conditions of the permission granted by the District Collector and no illegal excavation was found on the site. This was also confirmed by an inspection made by the PWD officials. Subsequently, the Tribunal perused the records produced by the District Collector, depicting the permission granted to the private persons for a period of 45 days; the records also showed the Environment Clearance ('EC') obtained by the 3rd party and that the lease granted to him had expired in 2015, after which no one was permitted to remove the soil.

The respondents also raised the maintainability of the application on the ground that no substantial question relating to the environment arose for consideration in this case. The Tribunal read Rule 12 which took care of environmental issues and made it abundantly clear that before granting any permission for the purpose of removal of sand, earth or silt from the tank beds, the Collector concerned has to issue a notification and thereafter permit the persons by giving preference to the local residents for the removal of such material. Therefore, the intent and purport of the rule appeared to give preferential treatment to the persons living in the villages to enable them to remove silt free of cost to be used for agricultural purposes. The records showed that the District Collector had given a clear go-by to the provisions of Rule 12 and even though the procedure wasn't a matter of environmental issue, allowing such indiscriminate removal of sand/silt was likely to affect the ecological character of the area.

Therefore, even though the lease granted had expired, the Tribunal was of the view that the respondents should further investigate the conduct of the 3rd party and find out if he had exceeded the limit prescribed in the permission and EC and to take appropriate action against the person by imposing costs for the purpose of restoration of the place to its original state. The Tribunal also directed the District Collector to strictly follow Rule 12 in the future.

With the above direction, the application was closed.

Kerala Western Ghat Protection Council
v.
Union of India & Ors
Application No. 139/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Ecological Sensitive Area, Issuance of Notification
Decision: Dismissed
Date: 9 August, 2016

JUDGMENT

The prayer in this application was for the direction against the 1st respondent to issue a final notification declaring Ecologically Sensitive Areas ('ESA') in respect of the Western Ghats in Kerala with immediate effect. The Union of India submitted that the Govt. of India had issued a draft notification in the Gazette of India as per the Environmental Protection Rules, 1986 and that there was sufficient time available to the government to issue a final notification regarding the declaration of ESA.

In view of the same, no further order was required in this case except directions to the Government of India to follow the provisions of the said Rules for the purpose of issuing the final notification.

With the above direction, the application was disposed of.

M. Velusamy
v.
The Secretary to the Government & Ors
Application No. 81/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Solid Waste Management
Decision: Dismissed
Date:11 August, 2016

JUDGMENT

The relief claimed in this application was to forebear the 3rd respondent authorities from granting any subsidy under solid waste management scheme of Tamil Nadu to the 8th respondent, the Commissioner, Coimbatore Corporation from construction of modern waste transfer station and compost plant for recycling garbage waste and to also forebear the 8th respondent for the aforementioned activities.

In a reply filed by the 3rd respondent, it was clearly stated that the State Planning Commission had not and would not grant any subsidy for the said project and in view of such a stand, the relief claimed by the applicant was achieved.

Accordingly, the application was disposed as nothing survived.

Subhas Datta
Vs.
State of West Bengal
Original Application No. 33/2014 (EZ)

Coram: Justice S.P Wangdi, Prof. P.C. Mishra
Keywords: Vehicular pollution, Air pollution
Decision: Allowed
Date: 11th August 2016

JUDGMENT

The application was filed with regard to the deteriorating air quality in the cities of Kolkata and Howrah due to vehicular pollution. It was the case of the applicant that the reports of the West Bengal Pollution Control Board had revealed alarming air quality of the city of Kolkata during the night hours between Mid-October to February being five to six times in excess of the safe limit. Initially, the applicant approached the Calcutta High Court wherein orders were passed to phase out old vehicles, comply with the Bharat Stage norms, introduce green-fuel, strengthen the system of inspection, maintenance and certification of vehicles, form High Power Monitoring Committee and effectively use Remote Sensing Devices (RSD). These directions were hardly complied with. The State did procure one RSD in November, 2009 which was inadequate for the entire city and therefore, in a conflict of action, the State Government decided to relax the Pollution Under Control (PUC) limits by issuing further directions with regard to the RSD, which was stopped in November 2014. Since the petitions before the High Court didn't come up for a long time, the applicant sought transfer of the same to the Tribunal.

The applicant prayed for directions to the respondents: to take steps to not allow the air pollution in the city beyond the permissible limits and to take immediate steps under the Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act 1986, to procure three more RSD for checking the emissions from individual vehicles on roads, to operate the existing RSD for measuring the level of pollution and to form a new monitoring committee or activate the existing committee.

The Tribunal sought status reports from the Transport Department and Pollution Control Board. Upon receiving the report, the tribunal considered the measures with respect to 'NO PUC, NO Fuel' which meant that no fuel would be sold to vehicles if they failed to produce a Pollution Under Control Certificate. The tribunal constituted an Expert Committee to recommend measures to deal with the problem of air pollution. Additionally, observing the criticality of the situation, the tribunal also passed certain interim directions to the respondent authorities:

1. For the SPCB to make semi-automatic air monitoring stations function within two months and collect ambient air quality data on a daily basis.

2. For the SPCB to install low cost sensor to monitor PM 2.5 in highly polluted areas and file a report within 4 weeks.
3. For the SPCB to engage a national level agency to collect and generate data on contribution of various sources of pollution to formulate a strategy to combat such pollution and file a compliance report within 4 weeks.
4. For the Department of Transport to submit a report based on the survey to ensure that vehicle owners do not face difficulty in checking their vehicles once every 6 months, to set up additions AETCs within 3 months after which the Tribunal would consider linking the PUC with purchase of fuel.
5. For the Commissioner of Police in both cities to check the compliance of each vehicle in procuring a PUC and take measures against those running vehicles without such a certificate.
6. For the Transport Department to submit a proposal within four weeks with respect to computerization of AECTs and connecting them to a centralized server for monitoring and make a surprise check of such units and impose a heavy penalty against owners violating terms of issuing certificates.

Subsequently, the Expert Committee submitted its preliminary report which observed that the level of pollution in the two cities had exceeded the acceptable limits, the major contribution to which were passenger carriers on the road, apart from construction activities and burning of municipal and industrial wastes. It also suggested the possibility of displaying air quality data on electronic display boards at strategic locations, for the WBPCB to integrate with the National Ambient Air Quality Index System and to relook the operation aspects of the AETCs.

The Tribunal also considered the measures suggested by the Applicant which included movement of certain vehicles only during the night hours, environment friendly road repairing, management of road vendors to avoid traffic, operation of diesel vehicles, PUC for Government vehicles, operations of odd and even no. of vehicles on alternate days, restrictions on slow moving vehicles etc. The Tribunal also considered the implementation of Government notifications dated 17.07.2008, 07.10.2009, 31.08.2012 which included measures like phasing out of 15 years old vehicles, use of alternative green fuel for auto rickshaws like LPG and CNG, implementation of Bharat Stage IV emission norms etc. Based on its report, the Expert Committee also gave recommendations which included measures for augmentation of air monitoring network as well as managing the traffic and streamlining the efficiency of Auto Emission Testing Centers. These included ensuring arrangement for continuous monitoring of PM 2.5 at the air monitoring stations, initiations of a Source Apportionment Study to collect and generate data on contribution of various sources of pollution, re-engineering of traffic and construction of underpasses, re-looking at the operational aspect of AETCs, stopping open burning of coal and wood etc.

The recommendations of the Expert Committee and the applicant were well accepted by the Tribunal, which directed the State authorities to consider and implement the same. The Tribunal further directed for implementation of the Notifications issued from time to time. Since the suggestion for adopting No PUC, No Fuel was found to be impractical, the Tribunal directed that the vehicles must undergo a pollution test at AETCs which would help the traffic police in enforcing the requirement of PUC. The authorities were asked to comply with the said directions and suggestions of the Expert Committee within a period of 6 months and file a compliance report for consideration.

With the above directions, the Application was disposed of with no order as to costs.

Manushyavakasa Samrakshana Sangham & Ors.
v.
State of Kerala & Ors.
Application No. 303 of 2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarrying, Stone Crushing, Environment Clearance, Consent
Decision: Dismissed
Date: 11 August, 2016

JUDGMENT

This application was filed against the blasting/mining/quarrying operations carried out by the private respondents in the Kalanjoor village located in Kerala alleging that the same were conducted without obtaining necessary permissions from the authorities and amounted to demolition of hillock and destruction of water resources. The matter was originally filed before the High Court of Kerala but subsequently transferred to the Tribunal. Though the applicants did not make any appearances in this matter yet the Tribunal entertained it on merits observing that the same involved environmental issues.

In response to the application, the Kerala State Pollution Control Board filed a status report that the respondents had valid permits including environmental clearance from SEIAA and consents from the Pollution Control Board for the said activities while two of the respondents (Respondent No. 16 and 17) had not started any such operations. The same fact was also confirmed in the report of the District Collector. It was further stated that there were no residential houses within 100 metre radius of the said operations and no dust pollution or health hazards were caused by the same.

Considering that the respondents were carrying out the activities with valid permissions, the Tribunal dismissed the application, however with a direction to the authorities to scrutinize the activities of the respondents and ensure strict action in case of violation. The Tribunal further vide separate order dated 14.09.2016 clarified that apart from the EC having been granted by SEIAA to the private respondents, valid consent of the Board was also substiing.

CCL Products (India) Limited
Vs.
Andhra Pradesh Pollution Control Board

Appeal No. 63/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Non- Compliance, Bank guarantee
Decision: Partly Allowed
Date: 16th August 2016

JUDGMENT

The appellant was an industry, which manufactured and sold Instant Coffee and was covered under the Orange Category industries under the environment norms. In order to commence its activities, it submitted an application to the Board for Consent to increase the capacity to produce spray dried coffee and to produce more variations of coffee; for which eventually, consent was granted. Subsequently, the unit was shifted to some other place, near an irrigation canal and the appellant had also acquired land in the nearby area. Directions were issued to the appellant, by the Board, to not store effluents outside the industry premises and to use the treated effluents in industry's own lands. The appellant complied with many other requirements, including upgrade of Effluent Treatment Plant, providing drum dryer and additional trauma cycles, etc.

It was the case of the appellant that it had spent a lot of money for the purpose of obtaining permission from various departments and the Board had directed it to furnish 3 bank guarantees i.e., two for Rs. 10 lakhs each for compliance of directions and another for Rs. 5 lakhs for continuous compliance. The appellant submitted that it had complied with all the requirements and furnished the bank guarantee, but after receiving the same, the Board did not constitute a committee to decide whether permission should be granted to the appellant to discharge its effluents in the DRBCC drain and demanded another bank guarantee of Rs. 77.5 lakhs stipulating conditions to not discharge untreated effluents into the DRBCC drain and to install an RO plant; directions were also given to stop all works of laying pipelines for discharge of storm water. The Board replied that invocation was as a result of non-compliance.

Herein, the main issue was whether the invocation of the Bank Guarantee was valid in law. The Tribunal noted that the Board has issued various directions on different occasions and had asked for guarantee on the basis of 3 ways of compliances. It referred to the case of Haryana State Pollution Control Board v. M/s. Haryana Organics, which held that once compliances are made, the purpose of bank guarantee can be treated as accomplished and the guarantee does not continue. Further, if there is a mutual term

incorporated for forfeiture, the Bank Guarantee cannot be forfeited. Therefore, the legal position was found to be that furnishing of bank guarantee as a security for due compliance was permissible, invocation for non-compliance is not penal in nature and is only compensatory for environmental loss caused, the purpose of the guarantee is accomplished when compliance is carried out and forfeiture has to be contemplated under Water (Prevention and Control of Pollution) Rules,1975.

The Tribunal took the view that though the Bank guarantee was invoked by the Pollution Control Board for due compliance of the directions with regard to the environmental norms, however, the same could not have been invoked without giving a prior notice or personal hearing to the appellant. The Tribunal therefore partly allowed the appeal holding that invocation of Bank guarantee was unwarranted and directed the Board to return the said amount to the appellant.

R.Kanagaraj
Vs.
The Tamil Nadu Pollution Control Board & Ors.
Application No. 278/2013 & M.A. No. 84/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Pollution, Compliance
Decision: Allowed
Date: 17th August 2016

JUDGMENT

The prayer in this application was for a direction against the Tamil Nadu Pollution Control Board and the District Environmental Engineer to issue a direction to the Supreme Coated Board Mills Private Ltd. for violation of S.25 of the Water (Prevention and Control of Pollution) Act, 1974 and S.21 of the Air (Prevention and Control of Pollution) Act, 1981. Whilst it was true that the Consent to operate of the Unit of the respondent Project Proponent, was valid up to 2018, the Board, up on inspection had pointed certain irregularities and non-compliance of the conditions imposed by it and it was found that the industry was asked to clear all the plastic and pulp wastes and store it inside a secured place. The Unit was also asked to plant more trees and was directed to not block the cart track running within its limits.

In the latest inspection report, it was found that the Project Proponent had improved the operation of the Unit and had attended to the redressal of complaints and therefore, the Tribunal did not find it important to interfere with the functioning of the Project Proponent. However, directions were issued to the Chairman of the Board to monitor the functioning of the Unit and ensure compliance with all requirements.

With the above directions, the application was closed.

Srinagar Bandh Aapda Sangharsh Samiti & Anr

v.

Alaknanda Hydro Power Co. Ltd & Ors

Original Application No. 03 of 2014 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Prof. A.R. Yousuf
Keywords: Hydro-Electric Project, No Fault Liability, Compensation
Decision: Allowed
Date: 19 August 2016

JUDGMENT

The application was filed praying for directives to the respondent, Alaknanda Hydro Power Co Ltd ["Project Proponent (PP)"] to pay compensation to the Srinagar Bandh Aapda Sangharsh Samiti, collectively representing the residents of Srinagar, for the damage to life and property, and for restoration of flood affected area as a consequence of the 2013 floods of Uttarakhand. It was the case of the applicants that the PP dumped muck at the dam gates inappropriately without taking necessary measures to secure it from the floods. At the time of heavy rains, when the reservoir of the dam was filled, the dam gates were kept close and when the same were opened it resulted into massive flow of water, sweeping away the muck dumped on the river body and carrying it to the villages causing destruction at a large scale. The applicants claimed compensation of Rs 9,26, 42,795/ for the loss suffered by its members and residents of the region.

On the other hand, it was the case of the respondent that the loss caused by the floods is due to an act of god (vis major), not attributable to the project, and in any case the victims have already been compensated by the State. It was further submitted by the respondent that it had itself been harmed and had suffered heavy loss and had infact protected the upstream areas by arresting huge sediment in the project. The pp further contended that the dam gates were never closed during the floods. The respondents also argued that the project in question was also being considered by the Supreme Court, however the applicants clarified that the present case was with respect to the assessment of damage and fixing up of liability as per the Polluter Pays principle which was not being dealt by the Supreme Court. The applicants pleaded that it was due to the negligence of the project proponent in handling the muck which aggravated the flood levels and laid to severe damage to the applicants. The applicants contended that Section 17(3) of the NGT Act recognizes the principle of No Fault liability, and therefore the respondent could be required to pay compensation even assuming the incident to be an accident, as the activity of running the project should be viewed as the plant referred to in the definition of term accident under Section 2(a) of the Act.

The Tribunal for evidentiary proof relied upon the report regarding the assessment of environmental degradation in Uttarakhand which revealed that there was significant contribution of project generated muck (phyllite dominated muck) which led to raising of the river bed and inundated the settlements in the downstream. The tribunal held that while the floods were an act of god, the PP was aware that the project is situated in a geologically sensitive area, where cloud burst is not a rare phenomenon, and the MoEF had also issued a direction towards muck disposal. As a consequence of this, human foresight if exercised would have led to the taking of protective measures. The Tribunal noted that there was laxity on the part of the project proponent in taking adequate safety measures for muck disposal sites and therefore rejected the plea of the respondent that the damage was the result of vis major. In any case, even if it were treated as an act of God, even though 'muck' does not qualify as a hazardous substance under Section 2 (e) of the Environment (Protection) Act, 1986, Alaknanda Hydro Power Co Ltd. can be regarded as plant, making injury caused by it one caused by accident as defined under Section 2(a) of the NGT Act. This conclusion was drawn on the basis of the fact that plant is defined as a place where an industrial or manufacturing process i..e a series of steps to achieve an end takes place, and the safeguards for muck disposal are an integral part of the manufacturing process, by virtue of which the entire place of project and activity thereof falls under the meaning of the word plant. Therefore, the principle of No Fault Liability was applied to hold the project proponent liable to pay compensation for injury caused.

The matter was thereby disposed of with a direction to the project proponent to deposit the compensation amount claimed within 30 days from the date of the order which could be disbursed by verifying claims by the State. The project proponent was further directed to pay litigation costs of Rs 1 lakh each to the applicants.

The application was thus allowed.

Aman Kumar Singh
Vs.
State of Bihar & Ors

Appeal No. 06/2016(EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Environmental Clearance, EIA, Mining
Decision: Dismissed
Date: 22 August, 2016

JUDGMENT

The appeal was filed challenging the Environment Clearances granted to 19 sand mining projects, all of which were granted EC on 04.03.2016 in favour of the Respondent No. 7 (M/s Mahadev Enclave Private Limited) on the rivers Chandan, Badua, Cheer, Sukhiya and Odhni in Banka district of State of Bihar. The contention of the appellant was that a total of 41 ECs were granted by SEIAA to several project proponents including the Respondent company in a mechanical manner since the same were issued on a single day with identical conditions. The appellant further argued that the projects of the Respondent did not meet the requirement of EIA and the mining lease area of 284 hectares was split into smaller units to circumvent the requirement of EC under Category A which was to be granted by the MoEF&CC and not SEIAA. It was also contended that the smaller units did not contain the area within which mining activities could have been carried out.

The Respondents refuted the claims on the basis that the credential of the Appellant as being a public-spirited person was questionable and that the appeal was filed with mala fide intentions since the appellant had chosen to challenge only the 19 projects of the Respondent company but not the rest of the projects which were granted EC in similar manner. Further, the Respondent submitted that not only had the Appellant failed to give any reasons as to how the ECs were bad in law but had also ignored the fact that the ECs granted to the Respondent were for different areas of the respective rivers located in different villages and the same have been granted after complying with all the conditions under the MOEF&CC Notification dated 15.01.2016.

In its counter argument, the appellant urged that considering the categorical stand of State of Bihar in IA No. 13 of 2011 in WP (C) No. 19628-19629 in the matter of Deepak Kumar vs State of Haryana before the Supreme Court wherein the State mentioned that all the sand ghats in Bihar are more than 50 hectares in area, no EC for such smaller areas would have been granted by SEIAA. Further the cluster approach adopted for these

projects was against State Mining and Mineral rules as amended in 2014 and Sustainable Sand and Mining Guidelines, 2016.

The Tribunal found it unreasonable for the appellant to only challenge the 19 projects of the Respondent No. 7 which he had assailed even in the earlier litigations whereas he had contended that all 41 EC's suffered from non-application of mind having been issued on a single day. The Tribunal also did not find anything contrary to law in the grant of the 19 ECs by SIEAA on account of the fact that the EC's were granted in respect of 19 different lease areas falling in different villages. Furthermore, the Tribunal also found that the total area of the lease was 135.39 hectares as opposed to 284 hectares. It concluded that the 19 ECs had been granted in favour of the Respondent Company after due compliance of the procedure prescribed under EIA notification 2006 which has been amended from time to time.

Accordingly, the appeal was dismissed *inlimine,* with no order as to costs.

Sunstream City Private Limited
Vs.
Paryavaran Dakshta Manch & Ors.

Review Application No. 3/2016 In
Application No. 55/2014 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Review, Coastal Regulation Zone, Construction
Decision: Disposed
Date: 23rd August 2016

JUDGMENT:

This review application sought a review of the order passed in O.A. No. 55 of 2014. In the original application, the applicant had sought to restrain construction activities in Survey No. 43 consisting of 20.7013 ha in Eastern Thane Creek. The area was described as a wetland by the Central Government. After due consideration of the facts and the defense, the Tribunal disposed of the petition vide order 15/01/2016. The directions issued vide in O.A. No. 55 of 2014 included directions to the MoEF to take independent decision regarding re-classification of subject land at Kopri from CRZ I (ii) to CRZ III. It directed the Developer to proceed with the development subject to the conditions that in case of adverse order in the Application he would not claim any equity and would inform buyers accordingly. Finally, MoEF and MCZMA were to carry out inspection at the construction site to ensure compliance of the CRZ/EC conditions and Environmental Regulations on quarterly basis. Till further orders the CRZ clearance and EC were suspended. The applicant sought review to modify the operative portion of the said order by restricting the suspension of the EC only to the extent that it reports to areas, which were at Kopri, Thane, 100 m landward side from HTL. The applicant further sought for restriction of clause (II) of the operative part of the order only in respect of portion of the subject land at Kopri, which falls within the CRZ area.

In response, the MoEF filed an affidavit in which it listed out the Committee's observations and site inspection of the area in question, concluding that the reclassification of land bearing City Survey No.43 was permissible by law. It also stated that the Govt. of Maharashtra should classify the plot under reference falling in buffer zone due to the presence of mangroves across the bund, based on the criterion given in CRZ Notification. On the other hand, the MCZMA contended that the MoEF itself should finalize the reclassification.

The Tribunal stated that the issue for determination in the present application was whether the directions issued by the Tribunal vide order dated 15/01/2016 created any ambiguity. The Tribunal noted that the applicant clarified that the EC granted was composite which also included construction in non-CRZ area. Thus, the Tribunal opined that it was necessary to clarify that the order dated 15/01/2016 was confined only to construction activities in CRZ zone and not to the areas beyond the CRZ area.

Accordingly, the review application was disposed of with no order as to costs.

Samir Mehta

v.

Union of India & Ors

Original Application No. 24 of 2011 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Prof. A.R. Yousuf, Hon'ble Mr. Ranjan Chatterjee
Keywords: Marine environmental pollution, Oil leakage, Coal Pollution, Environment Compensation, Principle of No Fault, Restoration, Principle of polluter pays
Decision: Allowed
Date: 23 August 2016

JUDGMENT

The application was filed by an environmentalist raising substantial question relating to environment in respect of the environmental damage and pollution caused by an oil spill due to sinking of the ship M.V RAK in the Arabian Sea in August 2011. The ship was carrying more than 60054 MT coal containing 290 tonnes of fuel oil and 50 tonnes of diesel and was on its way from Indonesia to Dahej. The ship sank approximately 20 nautical miles from the coast of South Mumbai spreading noticeable traces of oil from beyond Mumbai to Raigad District. The ship was owned by Delta Shipping Marine Services SA (Respondent No.5) which was carrying coal for Adani Enterprises Limited, (Respondent No. 6).

It was the case of the applicant that the oil spill caused major damage to the marine ecology leading to erosion, contamination, and adversely affected the marine mammals, birds, fish, mangroves, and wetland, and therefore the ship owner as well as the company, for whom the cargo was being transported were liable to pay compensation for restitution and restoration of the ecology and environment in terms of the 'Polluter Pays principle' read with section 17(1) of the NGT Act, 2010 which makes the "person responsible" for causing damage, liable to pay compensation.

The official respondents in reply submitted that the Maharashtra Pollution Control Board had initiated criminal action against the ship owner under the provisions of the Environment (Protection) Act, 1986 and Water Act, 1974 and had also issued a notice to remit remedial costs of Rs 3 crores. It was also stated that the provisions of the CRZ Notification apply only to territorial waters (Upto 12 Nautical Miles), while in the present case, the spill occurred at 20 Nautical Miles off the coast of Mumbai. The Indian Coastal

Guard stated that it has been empowered to combat oil spill in various maritime zones by virtue of the Coast Guard Act of 1978 and had taken all necessary measures to control oil pollution caused by the ship. It was the case of DG Shipping that the provisions of Part XIA of the Merchant Shipping Act, 1958 ("Act of 1958") with respect to containment of pollution of sea by oil were applicable to the present case, which provides jurisdiction with respect to territorial waters, continental shelf, exclusive economic zone and other maritime zones and accordingly had also issued a statutory notice to the owner of the ship under the said provisions. It further raised the issue of jurisdiction alleging that the provisions of the NGT Act do not extend to the Act of 1958. The consignee (Respondent No.6) denied its liability on the ground that it was not responsible for any contamination/pollution as the cause of the accident/sinking of the ship did not attribute to the cargo owned by the said respondent but to the oil leakage from the ship. It was further argued on the basis of the investigation reports that the ship was not seaworthy, therefore making the ship owner solely liable for environmental compensation in terms of the Polluter Pays Principle. It was further contended that the applicant did not have locus standi to institute the application. Based on the said contentions the tribunal determined the following issues –

1. Whether the applicant had locus standi under Section 18(2) of the NGT Act, 2010:

   The tribunal acknowledged that the right to healthy environment is a part of Article 21. It observed that the legislative intent behind the NGT Act, 2010 and the Environment (Protection) Act, 1986 was to give a very liberal construction to the statute, for example, the definition of person under Section 2(j) of the Act is very inclusive. Under Section 14, the tribunal has jurisdiction over all civil cases that involve a substantial question relating to the environment, and under Section 15, it can pass an order for relief and compensation to victims of pollution or environment damage. As per Section 18, an application under section 14/15 could be filed by a person who has sustained the injury/damage or any person aggrieved, The Tribunal drew a distinction between clause 2(a) and 2 (e) of section 18 where the former requires an application by a person who has suffered injury personally while the latter requires "person aggrieved" wherein any person even if not aggrieved/injured personally can invoke the jurisdiction of the Tribunal in larger public interests. Therefore, it was concluded that locus standi cannot be given a strict construction, as environment as a subject is society centric, thus, the applicant had the requisite locus standi as he had raised a substantial question relating to environment, the determination of which was within the ambit and scope of the NGT Act, 2010.

2. Who was the owner of the ship/persons responsible:

   Delta Shipping Marine Services SA, Respondent No.5 was determined to be the owner of the ship, and the Tribunal had to apply the doctrine of lifting the corporate veil to find out the common interests of other respondents in the ships voyage and related activities, and real intention of parties, as responsibility for environmental damage cannot be evaded by employing tools of manipulative management. Respondents No

7 (Delta Navigation WLL who signed the agreement on behalf of the owner) and 11 (Delta Group International, a sister concern of Respondent No. 7) were found to have commercial interest since they actively participated in the activity commencing from the voyage to its sinking and dumping. Thus, the said respondents were held collectively responsible/liable for the business of the ship. Further Respondent No. 6 was held liable for the consequences arising from the sinking of the consignment and not taking any preventive measures to lift its coal from the sea.

3. Liability of the Respondents under Sections 14, 15, 17 read with 20 of the NGT Act, 2010:

The tribunal identified the three components of environmental pollution – first, the sunk ship, second, the cargo, and lastly, the oil spill. It considered different Indian Statutes and International Conventions for different stages. The Tribunal observed that India is a signatory to the International Convention on Civil Liability for Bunker Oil Pollution, however the Act of 1958 had not been amended to incorporate the same, but it has been amended to incorporate the provisions of the International Convention on Civil Liability for Oil Pollution Damage and the International Convention for the Prevention of Pollution from Ships (not a liability fixing convention).

The other relevant convention was identified as the UN Convention on the Law of the Seas (UNCLOS), which requires States to adopt regulations to prevent and reduce marine pollution, in furtherance of which the Maritime Zone Act, 1976 ("Act of 1976") was enacted by India which provided for matters relating to Territorial Waters, Continental Shelf, EEZ and other maritime zones. Other convention taken into consideration were the Nairobi Wreck Removal Convention, BASEL Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and The Convention on Biological Diversity. The Tribunal also relied upon Article 21, Article 48A and Article 51A (g) and judicial pronouncements of the Supreme Court under Article 141 of the constitution to throw light on various dimensions of environmental jurisprudence.

The tribunal then examined the provisions of the Act of 1958. The tribunal found that as per Section 356(J) of the Act, agents, masters, charters are all liable for prevention, containment and removal of pollutant and for punitive action in event of default and that as per Section 71, 'owner' is any person beneficially interested, and that liabilities therefore are not confined only to registered owner. The tribunal then examined the provisions of the NGT Act and observed that the term "person responsible" in section 17 has been liberally construed to include a person who had carried on any activity resulting in pollution.

Therefore, the tribunal found Respondents No. 5,7,11 directly responsible for sinking of the ship and cargo, oil spill and resulting pollution. It further noted that sunken ship and cargo (as coal is a hazardous substance) were a continuous source of pollution and made Respondent No.6 liable for cargo pollution. All these respondents were held

liable for facing consequences of the accident, for taking remedial measures and payment of environmental compensation under the NGT Act, 2010.

4. Whether the Tribunal had jurisdiction over the issue/or the Merchant Shipping Act, 1958 ousts the jurisdiction:

To answer the question, the tribunal thought necessary to elaborate upon the expressions 'sovereignty, sovereign rights, and sovereign functions', and the provisions of the Convention for Bunker Oil Pollution, Convention on Civil Liability on Oil Pollution Damage, Convention for Prevention of Pollution from Ships. The Tribunal found that the cumulative readings show that these conventions do not interfere with state sovereignty, but rather show that protection of marine environment, claim of damages, etc. are not restricted only to territorial waters, but also applicable to EEZ and Continental Shelf, with carrying degrees of State control. The tribunal then examined the Act of 1976, as per which the Government of India exercises sovereign rights, and Section 356-B of the Act of 1958 where coastal waters includes any areas over which India has, or may have exclusive jurisdiction in regard to control of marine pollution under the Act of 1976. The tribunal held that the provisions of the 1958 and 1976 Acts would apply harmoniously to all situations regarding foreign ships in any of the above described zones. The tribunal held that Section 3 of the Environment (Protection) Act, 1986 read with Section 356J of the 1958 Act would make a ship, its agent and master liable to follow directions with respect to marine pollution in the above mentioned zones, bringing the matter within the jurisdiction of the Central Government and hence the tribunal, and contrary to what respondents had argued, no specific notification by the Govt. extending the operation of Acts of 1986 and 2010 was required. Thus, it was held that the case was squarely covered within the ambit and scope of the jurisdiction of the Tribunal. Moving further to the issue of concurrent proceedings before the tribunal/under the FIR filed under Section 7, 8, 9 of the 1986 Act and Section 43 and 45A of the Water Act, 1974 it was held that the law recognizes concurrent proceedings, and the tribunals jurisdiction was independent of parallel proceedings. It further noted that the said proceedings under different acts were not related to environmental damage and compensation which was only within the jurisdiction of the Tribunal.

5. Whether the ship was seaworthy from its commencement till arrival at 20 Nautical Miles off the coast of Mumbai:

The tribunal noted that the ship was registered and satisfied the requirements of the Act of 1958 in that respect, however it was facing technical and mechanical problems since July, 2011. DG Shipping had appointed an inspection team through the Mercantile Marine Department of Mumbai, as per which a shadow was casted on the genuineness of certificates issued prior to commencement of voyage, as all was not

well even at that stage. The tribunal felt that the contents of the report, res ipsa loquitur, make out a case of negligence under the 1958 Act as well as Article 219 of the UNCLOS and other conventions, against Respondents Nos. 5, 7, and 11, as the ship was not sea worthy.

6. Whether the sinking ship caused or continued to cause pollution as it lie in the Contiguous Zone along with its Cargo:

The tribunal concluded that the oil spill had affected water, aquatic life, mangroves on the coast and the marine environment. Additionally, the wreckage of the ship was also affecting the water, by virtue of being a continuous pollutant. The NEERI assessment concurred that the damage was ecological, social, economic and on a very large scale. Based upon various international studies and reports the Tribunal noted the short and long term impacts of the oil spill causing serious damage to the marine environment. Even dispersants used for controlling oil spills were found to have harmful effects on the aquatic species. Moreover, even the coal being transported was considered to have caused toxic effects to aquatic biota, flora and fauna of the sea. The Tribunal further dealt with two aspects: (1) the damage already done and the damage which could be prevented by applying precautionary measures for controlling marine pollution in future and observed the sunken ship along with its cargo as a continuous source of pollution which was required to be removed from the seabed of the Contiguous Zone of the Indian water promptly.

7. Compensation to be paid by each of the respondents under Sections 15 and 17 read with Section 20:

Section 17(3) mandates the application of the Principle of No Fault/Strict Liability, while Section 20 requires application of the Precautionary Principle and Polluter Pays Principle. The tribunal held the incident not to be an accident simplicter, and considered the conduct of the respondents in not rendering adequate help as an indicative factor of the respondents' negligence to the whole situation. The onus was therefore placed on the Respondents to prove that they adhered to the Doctrine of Due Diligence/carried out the essence of the Precautionary Principle and took reasonable care and caution. The Tribunal noted that it was the Indian Coast Guard which took efforts to prevent the ship from causing pollution. However, none of the concerned parties (Respondent No. 5, 6, 7, 11) came to the rescue and even after the incident the dumped material happened to be in the sea which was noted to be a flagrant violation of the Precautionary principle.

The Tribunal further analysed the question of computing the damage in terms of money which according to the Tribunal was based upon guess work as it noted that in cases of environment it was difficult to determine the amount with exactitude and precision. Considering that the pollution was a continuing one having adverse impacts in the future, the Tribunal determined the environment compensation as a total of 100 crores (including the expenses incurred by the Coast Guard) to be paid by the

Respondents Nos. 5, 7 and 11 for their default, negligence and persistent pollution caused to the marine environment and imposed Rs. 5 crores on Respondent No.6 for chartering a ship of this kind/dumping of coal in the Contiguous Zone of the Indian waters. The amount was directed to be utilised for restitution and restoration of the damage done to the environment.

8. Whether the insurance company incurs liability, and whether the winding up proceedings in respect of this company were material to deciding the dispute:

Astra Asigurari Insurance (Respondent No. 9) had submitted that its liability was only with respect to the 'pay to be paid clause', and the ship owner could only recover from the insurer, the payments it made. It was also submitted that the company was being liquidated, as a consequence of which it could not be proceeded against. The tribunal held that a valid insurance policy was in place on the date of the accident, and therefore it was liable only for reimbursement under the said clause. However, it also clarified that the pending liquidation would have no effect on proceedings before the tribunal, as Romanian Courts could not bind the Indian Legal System.

The tribunal thus, rejected the pleas of the respondents and allowed the application with directions for removal of the ship and its cargo from the sea, payment of environment compensation as imposed for causing marine environmental pollution and for constitution of Committee to report on the effects of removal of the ship wreck and cargo from the sea and compensation to be paid by the respondents at regular intervals to prevent and control further pollution.

Accordingly, the application was disposed.

PSN Medicare Private Limited
Vs.
The Member Secretary, Telangana Pollution Control Board
Application No. 194/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Renewal of Consent
Decision: Allowed
Date: 24th August 2016

JUDGMENT

The relief sought for in this application was for a direction against the respondent Board to process the application for "Consent to Operate" the unit, which carried on the business of manufacture of bulk drug Paracetamol and was run by the predecessor of the applicant with due "Consent to Operate".

When the Purchaser was unable to run the unit, the applicant, who became the current owner, filed an application for renewal of consent with a desire to continue the manufacturing activity. In spite of the representations made by the applicant, the Board did not pass a consent order.

Considering the above facts, the Tribunal directed the respondents to consider the application for renewal of consent, on merits and in accordance with law.

With the above direction, the application stood disposed.

Rajendra Singh Bhandari

v.

State of Uttarakhand & Ors

Original Application No. 318 of 2013 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Prof. A.R. Yousuf, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Composition of State Pollution Control Boards, Eligibility Criteria
Decision: Allowed
Date: 24 August 2016

JUDGMENT

The application challenged the constitution of Uttarakhand State Pollution Control Board on the grounds that people who do not qualify in terms of Section 4 of the Water (Prevention and Control) of Pollution Act, 1974 and Section 5 of the Air (Prevention and Control) of Pollution Act, 1981 are being appointed as Chairman/Member Secretary of the Board. It was the case of the applicant that there was no infrastructure for professional and technical officer in the Environment Department of the State Government and State Board, no State Laboratory for analysis of samples of trade effluent, sewage or air emission, which are in violation of the Air and Water acts. It was further submitted that rehabilitation and rebuilding of infrastructure in the State was being planned/executed by IAS/IFS officers with only an administrative/forest background, and no experience in the field of environment conservation. A case was made out against the grant of NOCs by the Board, allegedly based on invalid reports submitted by unrecognised authorities, which violates Section 21 and 26 of the Water and Air Acts respectively. Additionally, it was also submitted that no Member Secretary of the Board was allowed to complete a full term, in contravention of the Air and Water Acts.

It was the case of the respondents that IAS/IFS officer of administrative/forest background have the requisite knowledge/practical experience in the field of the environment, and in any case the Acts do not lay down any basic academic qualifications to be possessed by a person seeking to be appointed as Chairman/Member Secretary. The tribunal identified Section 2(f) (defining the word prescribed), Section 4 (laying down the constitution of State Boards), Section 5 (Terms and Conditions of Service of Members),

Section 17 (Functions of State Board), Section 19 (Power to Obtain Information), Section 27 (Refusal or withdrawal of consent by State Board), Section 32 (Emergency measures in case of pollution of stream or well), Section 33A (Power to give directions), Section 64 (Power of State Governments to Make Rules), as the relevant provisions of the Water Act. Under the Air Act, Section 2(n) (defining 'prescribed'), Section 4, 5 (laying down the constitution of the State Board), Section 7 (Terms and Conditions of Service of Members), Section 14 (Member-secretary and officers and other employees of State Boards), Section 17 (Functions of State Board), Section 20 (power to give instructions for ensuring standards for emission from automobiles), Section 22 (persons carrying on industry, etc. not to allow emission of air pollutants in excess of the standards laid down by the state board), Section 25 (Power to obtain information), Section 26 (Power to take samples of air or emission and procedure to be followed in connection therewith), Section 31A (Power to give directions), and Section 54 (power of State Government to make rules) as the relevant provisions. Under the Environmental Protection Act, 1986; Section 2 (defining environment), Section 3 (powers of central government to take measures to protect and improve environment), Section 5 (power to give directions), Section 24 (effect of other laws) were identified as key sections.

The tribunal found that inspite of the clear provisions of law, judgments of the Hon'ble Supreme Court, and guidelines laid out by the court appointed committee, together with Central Government directions, largely persons appointed to hold critical posts across States did not have the requisite qualifications. People holding posts without the requisite qualifications undoubtedly negatively affects the working of pollution control boards, which in turn affects the environment. The respondents had argued that the tribunal does not have the jurisdiction to deal with the matter at hand, but this contention was dismissed by the Tribunal, on the ground that Section 14(1) of the NGT Act provides the tribunal jurisdiction over all enactments in Schedule I, which includes the Air and Water Acts, under which constitution of the boards/eligibility/qualifications has been dealt with. The argument that an SLP had been dismissed regarding the same matter was also not accepted by the tribunal, as in the petition in question, the matter was not decided on merits.

The tribunal found the case to involve a recurring cause of action, and thereby well within the period of limitation, contrary to the respondents' contentions. After dealing with these preliminary issues, the tribunal undertook the taste of statutory interpretation, ascribing first a plain meaning to the statute, and then examining its object and purpose. The words "Special Knowledge" or "Practical Experience" under the Water and Air Acts, were interpreted according to the context in which they are used, by referring to other statutes using the same expressions in respect of qualification of a member, and Legal Dictionaries. Special Knowledge was described as information acquired through exceptional learning in terms of quality and degree, derived through rigorous study or research over a reasonable period of time in the field of matters relating to the environment, through accepted and established norms of education. The requirement of Special Knowledge therefore, necessarily excludes persons with ordinary or casual

knowledge in respect of environmental matters. Examples of post-graduate in environmental engineering/management, civil/chemical engineering with environmental specialization, 4 years graduate in environmental engineering, and 2 years MSc in environment science/management were given. Special Knowledge was believed to presume the existence of basic academic qualifications, while practical experience was termed as knowledge gained through practice after putting it to practical use. Therefore, for being nominated as Chairman, distinguished and exceptional knowledge or practical experience was described as a pre-requisite. 'Knowledge and experience in administering institutions', in Section 4 was interpreted to have the same requirement of special knowledge, and the tribunal held that mere experience in administration of an institution related to environmental protection does not make a person eligible, and knowledge in relation to environment protection was described as essential. The tribunal then examined the Air Act, which is pari materia to the Water Act, and stressed the fact that the phrase 'Knowledge and experience in administering institutions' has been deliberately excluded, reflecting legislative intent to make "special knowledge" and "practical experience" mandatory for nominating a person as Chairman of State Boards, given that Board constituted under the Water Act also performs the functions under the Air Act. Moving then to the rule making powers of State Governments, the tribunal referred to the word 'shall/may' in the Air and Water Acts to mean that States must frame rules regarding the conditions of eligibility to become Chairman and Member Secretary of State Boards. Further, regarding the appointment of Member Secretary, the tribunal held that such a person must be a full time member, possessing qualification, knowledge, and expertise in science, engineering, or management aspects of pollution control, and therefore recalling officers before term completion was held to be contrary to law.

The tribunal concluded that a Member Secretary for the IFS does not fulfil the criteria, because under the forest services, only a part of the relevant law of environment protection is studied. The tribunal then held that the official members/local authorities/non-official members/representatives of state companies to be nominated by the State Government to the State Boards should not exceed five, three, and two members respectively. Further, not less than two members should have special knowledge or practical experience in matters relating to improvement of quality of air, prevention/control/abatement of air pollution. The tribunal concluded that the State of Uttarakhand has violated the law by appointing members lacking the requisite qualifications/those who do not satisfy the three eligibility criteria, of special knowledge, practical experience, or knowledge and experience in administering institutions dealing with the matter of environment. The services of incumbent office holders were dismissed, and new appointments were to be notified.

While disposing off the application, the tribunal laid down guidelines, directing that State Governments/Union Territories must constitute Boards in accordance with Section 4 and 5 of the Water and Air Acts respectively, and see to it that all office holders have the

requisite qualifications/ensure fixed term of office, that the laboratories and infrastructure is upto date, as well as notify rules specifying these qualifications.

K.K. Subramaniam & Ors
v.
Loss of Ecology Authority & Ors
Application No. 10/2012 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Compensation, Water Pollution, Contamination, Soil Deterioration
Decision: Dismissed
Date: 26 August, 2016

JUDGMENT

The application was originally filed before the Hon'ble High Court of Madras challenging the order of the Respondent Authority granting compensation of Rs 8,30,247/- for the total extent of 10.5 acres of land in Thoppampatti Village. The same was subsequently transferred to the Tribunal.

The applicants were stated to be joint owners of the land, which was used for cultivating sugarcane, paddy, groundnut, mango, coconut and teak. However, there had been no yield on the land due to the pollution of the nearby river Noyyal caused by the Bleaching and dyeing Units in Tirupur area. Thus, there had been contamination and soil deterioration in the area. The applicants took help of the Expert Soil Scientist who opined that the loss in respect of cultivation had led to a loss to the extent of Rs. 19,27,500 /- and on this basis, the applicants had filed a claim petition claiming compensation of the said amount.

The respondent authority had passed an award stating that the applicants were entitled to compensation for loss in production of predominant crops and not for individual crops and despite challenging this in court multiple times, no award was passed as per the applicant's prayer. It was the applicants' contention that the evidence adduced before the respondent Authority had not been considered and the amended claim was based on an opinion which led to reducing the amount claimed and this was devoid of any reason. On the other hand, the respondents stated that the applicants were present in the inquiry but had not appeared when the inspection was made and the award amount was decided by appreciating the evidence, and thus, there was no illegality in the award decided.

The Tribunal saw absolutely no reason to interfere with the assessment and quantum arrived at by the Expert, who assisted the respondent Authority, adopted the principles

of Teak silviculture and arrived at the loss in respect of Teak Trees at Rs.2,37,760/- following such scientific method. The claim regarding the Coconut trees, Mango trees and polluted water could not be considered to be either illegal or perverse in the view of the tribunal and did not require any interference based on detailed factual discussions. The Tribunal considered the expert opinion which elucidated that no agricultural operations were going on since 2011, which meant that polluted water was not being used. Further, he also held that the soil was still fit for cultivation and therefore, there was no need for any interference. Also, a notice was sent to applicant no. 1 informing about the proposed visit by the Expert on 30.06.2010 and in spite of it, the applicants did not chose to appear. In the view of the tribunal, it was not the fault on the part of the Authority.

Therefore, finding no merit in the application and holding that the applicants were not entitled to claim any amount more than what was awarded by the Authority, the application was dismissed.

Chinnapaiyan
Vs.
Tamil Nadu State Pollution Control Board & Ors
Application No. 147 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Prior EC, Consent, Mining
Decision: Dismissed
Date: 26th August 2016

JUDGEMENT

This application was filed with a prayer to restrain the 13th respondent from dredging, quarrying, mining and transporting of minerals from Veppampatti Lake near Sarabanga River without obtaining prior EC and for a direction to set right the environmental and ecological damages said to have been caused by quarrying beyond the scope of the mining permit granted for gravel in the tank and for other respondents to issue necessary permission to start the operations only after strict compliance with the mandatory requirements of law. It was submitted that the dredging and mining took place in the middle of the waterbed, which lead to environmental degradation such as bank erosion, reduction of water level, removal of bottom sediments, exposure of subsurface water etc.

Upon receipt of the application, the Tribunal granted an interim injunction against the respondent and directed the Pollution Control Board to inspect the spot concerned and file a status report. The said report indicated that the 13th respondent had applied for removal of a portion of gravel for a period of 11 months and had obtained mining plan approval. It also stated that the SEIAA had granted EC subject to various conditions that there was no protected area within 10 km radius. Further, there was no natural drainage pattern inside the tank and no drilling and blasting was carried out; neither were any civil structures located nearby. It also indicated that the Board has issued "Consent to Operate" under the Water and Air Act. The 5th respondent (Public Works Department) contended that all necessary permissions and clearances were granted to the 13th respondent and his activities were being monitored regularly.

Based on the reports and contentions by the various statutory authorities, the Tribunal noted that there was no environmental issue that arose for consideration. The applicant's

case failed since the the respondent had already obtained the necessary EC and Consent and the applicant did not take any necessary steps under the RTI to know the correct facts. In view of the same, the application was dismissed, with no order as to costs.

Mr. Sadanand Pandurang Mane
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 22 of 2016
In
Appeal No.32 of 2015

Mr. Shailesh Shashikant Parab
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 23 of 2016
In
Appeal No. 33 of 2015

Mr. Milind Ramchandra Keluskar
v.
State Level Expert Appraisal Committee
Execution Application No. 24 of 2016
In
Appeal No. 34 of 2015

Mr. Ashok Bhupal Kurade
v.
State Level Expert Appraisal Committee
Execution Application No. 25 of 2016
In
Appeal No. 35 of 2015

Mr. Sadashiv Mahadev Morye
v.
State Level Expert Appraisal Committee
Execution Application No. 26 of 2016
In
Appeal No. 36 of 2015

Mr. Pramod Sadanand Kambli
v.
State Level Expert Appraisal Committee
Execution Application No. 27 of 2016
In
Appeal No. 37 of 2015

Mr. Hanumant Bhaskar Talekar
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 28 of 2016
In
Appeal No. 38 of 2015

Mr. Mayaji Bapu Gurav
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 29 of 2016
In
Appeal No. 39 of 2015

Mr. Sagar Chandrakant Loke
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 30 of 2016
In
Appeal No. 40 of 2015

Mr. Sahadev Shamrao Chavan
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 31 of 2016
In
Appeal No. 41 of 2015

Mr. Chandrakant Vishnu Pujare
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 32 of 2016
In
Appeal No. 42 of 2015

Mr. Narhary Kirshanji Lingaraj

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 33 of 2016

In

Appeal No. 43 of 2015

Mr. Sanjay Ganpat Pol

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 34 of 2016

In

Appeal No. 44 of 2015

Mr. Santosh Eknath Parab

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 35 of 2016

In

Appeal No. 45 of 2015

Mr. Rajendra Pandurang Mane

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 36 of 2016

In

Appeal No. 46 of 2015

Mr. Narayan Motiram Hindalekar

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 37 of 2016

In

Appeal No. 47 of 2015

Mr. Ramesh Mahadev Bandal

v.

State Level Expert Appraisal Committee & Ors.

Execution Application No. 38 of 2016

In

Appeal No. 48 of 2015

Mr. Bhalchandra Bajirao Satam

v.

State Level Expert Appraisal Committee & Ors.
Execution Application No. 39 of 2016
In
Appeal No. 49 of 2015

Mr. Vilas Narayan Hadkar
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 40 of 2016
In
Appeal No. 50 of 2015

AND

Mr. Mahadev Balkrushna Parkar
v.
State Level Expert Appraisal Committee & Ors.
Execution Application No. 41 of 2016
In
Appeal No. 51 of 2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Moratorium, Ecologically Sensitive Areas (ESA), Non-Compliance, Execution
Decision: Disposed
Date: 26th August 2016

JUDGMENT

The present Execution Application was filed against the respondent for non-compliance of the order dated 17/08/2015 passed in Appeal No. 32 of 2015. In the Appeal, the applicant had challenged the decision of SEAC to apply the moratorium for Ecologically sensitive areas issued by MoEF for 6 Talukas of Sindhudurg District to entire Malvan and Vengurla Talukas. The Tribunal held that the appeal was not maintainable but it had directed the MoEF to clarify SEAC on the moratorium within 2 months. Thereafter, SEAC was directed to take final decision on the proposal submitted by the applicant within 3 months. It was the case of the applicant that these directions were not complied with by MoEF as well as SEAC.

In response to the application, the SEAC submitted that the MoEF was yet to clarify on the moratorium issued and the final decision was not yet taken. The Tribunal opined that the only issue that needed consideration in the present matter was that whether the permission sought by the applicant was covered under the moratorium areas or not. The Tribunal noted that this issue was a fact finding process which was to be done by SEAC

but was referred to MoEF. Further, the Tribunal opined that the SEAC had to take an independent decision on grant or non-grant of permission sought by the applicant. Therefore, it did not find any justification in the contention of SEAC that they were awaiting reply from MoEF on the application.

The Tribunal also referred to an order dated 24/02/2016 which was passed by SEAC subsequent to disposal of Appeal No. 32/2015. In this order, the SEAC noted that the High Court had lifted the moratorium from the villages which were not covered under non eco-sensitive areas. However, SEAC observed that 21 villages appeared as ESA in the Draft Notification of MoEF dated 04/09/2015. Accordingly, the applications were kept in abeyance till the finalization of the draft notification. The Tribunal opined that MoEF had issued Draft Notification and unless the notification was finalized, SEAC had to take a decision based on the Notification in force. Further, the Tribunal noted that SEAC was shying away from taking decision on the applications which was clearly an indication of failure to perform its statutory duty. In view of the same, the Tribunal allowed the applicant to invoke its jurisdiction under Section 14 of the NGT Act and to take appropriate steps.

Accordingly, the application was disposed with no order as to costs.

Dr. A. Krishnamoorthy
Vs.
The Commissioner, Aruppukottai Municipality and Ors.
Appeal No. 51/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Noise Pollution
Decision: Dismissed
Date: 29th August 2016

JUDGMENT

The appellant in the present matter was aggrieved over the 2nd respondent's continuous operation of power loom machinery adjacent to the residence of the appellant who was a medical practitioner. According to him, not only his health was getting affected due to the noise pollution but he was also unable to carry on his profession peacefully. The appellant had originally filed a Writ Appeal before the Madras High Court which was subsequently transferred to the Tribunal.

As the per the directions of the Tribunal, the District Collector had attempted to figure out alternate places for the purpose of shifting the power loom units outside the town but no such land was available within a 25 km radius of the town. It was also found that the 2nd respondent had already vacated the premises and in the said premises, no weaving or handloom activity was going on. In view of the same, the Tribunal dismissed the appeal, issuing directions to the District Administration and the Pollution Control Board to regularly monitor the functioning of the handloom activities and to ensure that no one carried out activities beyond the restricted time period of 10.00 am and 6.00 pm.

The Tribunal also directed the District Administration to continue to find out an effective alternate place to shift these handloom and power loom activities to a common place so as to avoid noise pollution.

With the above directions, the appeal was disposed of.

Dr. M.G.R Educational and Research Institute & Ors
v.
The Chairman, Tamil Nadu Pollution Control Board & Anr
Appeal No.122/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: STP, Compensation, Polluter Pays Principle
Decision: Disposed
Date: 29 August, 2016

JUDGMENT

The prayer in this appeal was to set aside the order of the Pollution Control Board passed under S.33A of the Water Act, which showed that for the want of STP being constructed by the 5 units of the appellants No. 1 to 5 (Ladies Hostel, University Campus, Men's Hostel, Dental College and Polytechnic College) the Board had invoked the provisions of the Water Act, directing closure of these institutions.

The Tribunal had passed an interim order directing the appellants to pay Rs. Forty lakhs on the polluter pays principle, which had duly been paid. It was the case of the appellants that in respect of all the 5 units, they had constructed the STP in accordance with the guidelines and were awaiting "consent" from the Board. The respondent board submitted that in respect of the Ladies Hostel, Gents Hostel and University Campus STPs had been completely installed and "consent to operate" granted. In respect of the Dental College and Polytechnic College, the Board had already inspected the premises and requirements had been complied with; the Tribunal directed it to pass appropriate orders in respect of granting consent to operate the STPs within 3 weeks from the date of the order, after which the Board shall refund the Bank Guarantee furnished by the appellant. The appellants, who were impleaded suo motu in Application No.299 of 2013, were discharged in the said application.

As the requirements of the Board had been complied with, there was nothing that survived in the Appeal. Accordingly, the above appeal was disposed of.

Jalander Nana Jadhav & Ors.
Application No. 39/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Water Pollution, Water Tanks, Pipelines, Oil Mixing, Compensation
Decision: Disposed
Date: 29th August 2016

JUDGMENT

In the present application, the Applicants were the 24 families that were entitled to relief by an order dated 27/08/2015. It was the case of the Applicants that in the Application No. 42/2014 ('The Application'), in which the abovementioned order was passed, the applicants were victims of water pollution and thus they sought compensation. The Application was filed by a representative of a group of 24 families based at Akolner village, who alleged to be the victims of water pollution in the area, caused by respondents 1 and 2. In addition to compensation for each affected family, several other directions were sought from the Tribunal.

The Tribunal after considering the arguments and material presented opined that only one relief was necessary for consideration to dispose the Application which was the plea for compensation. The Application was disposed with certain directions and further directions were issued to Respondent No. 1 & 2 to pay Rs 5,00,000 each with the Collector for execution of the directions given. Further, Respondent No. 1 & 2 were also directed to pay as compensation Rs. 5,00,000 to one Mr. Bappa Tabaji Gaikwad whose well was found to be contaminated with oil.

Coming to the present Application, the Tribunal noted that its earlier order in Application No. 42/2014 was clear in its expression and the cause of action would only arise in favour of the affected person but for the purpose of determination there has to be an individual application and determination as mentioned under Section 15 of the National Green Tribunal Act, 2010 ('NGT Act). Thus the Tribunal opined that for Respondent No. 1 and 2 to pay compensation, it was necessary to determine as to who was entitled to receive the compensation and for that purpose an individual claim was necessary. The present Application was disposed reserving liberty for all those affected by pollution to file application for compensation by virtue of order in Application No. 42/2014 and apply under Section 15 of the NGT Act for determination and grant of compensation.

Accordingly, the present application was disposed with no order as to costs.

Mrs. J. Mohana
Vs.
The Commissioner of Police & Ors.

Application No. 108/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Noise Pollution, Religious activity
Decision: Allowed
Date: 30 August 2016

JUDGMENT

This application was filed seeking a direction against the respondents 1-3 to initiate appropriate action against respondents 4-5 under Noise Pollution Rules to control the noise levels emanating from the Evangelical Church of India, Chennai, stemming from period meetings, which exceeded the prescribed time limits and affected the applicant, as a neighbour.

The 5th respondent, in its reply, denied the existence of unbearable noise and stated that it was taking all necessary steps to reduce the noise level by making the prayer hall air-conditioned which would result in closing of all windows. However, the air conditioning was not completed due to non-availability of funds but it was stated to be completed within a period of 6 months.

The Pollution Control Board inspected the site and observed that the Church was surrounded by residences in the northern, eastern and southern sides and had 10 box type speakers fixed within the premises, all of which were put to use. It assessed the level of noise pollution and found that even the background noise was exceeding the ambient noise level standards and that there was an incremental increase in noise level even when the prayers were performed when the windows were closed. The Board suggested operating the amplifiers at lower levels which was to be immediately carried out. Along with use of noise absorbing materials.

Accordingly, the application was disposed of with directions to the respondent 4-5 to follow the directions given by the Board by installing suitable acoustic measures and play amplifiers at a lower volume of sound to avoid others from being affected by the pollution.

Dileep B. Nevatia
Vs.
Union of India & Ors.
Application No. 81/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Air pollution, Kerosene, Sulphur, Rural Areas, Environment pollutants
Decision: Allowed
Date: 30th August 2016

JUDGMENT

The application was filed against the alleged violation of Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 caused due to supply of poor quality of kerosene by the public sector refineries, operating under the Ministry of Petroleum and Natural Gas, to the poorest segment of the society thereby adversely affecting the health of poor people around the country. It was the case of the applicant that the Indian Standard IS 1459:1974 for Superior Kerosene was adopted in 1974 and had remained unchanged since then except for minor amendments in 1984 and 1993. The grievance of the applicant was that while all efforts were being made to reduce outdoor pollution by improving the automobile fuel quality, no steps and efforts were made to reduce the highly excessive Sulphur content in the kerosene used for domestic purpose.

In response to the application, MoEF did not file any response. However, the Ministry of Petroleum & Natural Gas contended that though the sulphur content in kerosene had remained unchanged since 1974, sulphur reduction in auto fuel and kerosene cannot be compared. Further, the respondent stated that in July 2014 Bureau of Indian Standards ("BIS") finalized a new draft standard IS: 1459 for sulphur content in kerosene and emphasized on the efforts made to increase the National LPG coverage in Rural and backward areas. The CPCB stated on affidavit that the high quality of Sulphur in the kerosene supplied resulted in higher emissions of both Oxides of Sulphur as well as particulates upon combustion. Further, IOCL contended that any violation of the BIS Act and fixing of the standards/specifications under the Act is a statutory function and cannot be dealt by the Tribunal.

The Tribunal dealt with three main issues in the present application. First, Whether the Tribunal had jurisdiction to deal with the application. Second, whether there was any urgency for

prescribing standards for sulphur content in kerosene. Lastly, what can be the time frame for the implementation of such standards.

The Tribunal noted that the present application was seeking directions to the Authorities for taking measures to notify the sulphur standards for kerosene. Once the authorities duly exercise the power for making rules as mentioned under the Environment (Protection) Act 1986 ('EPA'), the issue arising out of other enactments like BIS Act become subservient to the cause of environment on account of overriding effect of EPA by virtue Section 24 of the said act. The Tribunal also noted that the BIS Act cannot eclipse the provisions of the National Green Tribunal Act, 2010 by virtue of Section 33 which provides for overriding effect. Finally, the Tribunal relied on the replies filed by the respondents to conclude that use of kerosene and resultant air pollution was a substantial issue related to environment and thus the Tribunal had the competent jurisdiction to deal with the present application.

Coming to the second and third issue, the Tribunal observed that considering the continuous adverse health effects due to indoor air pollution resulting from use of kerosene, the environmental standards are required to be framed keeping in mind the the precautionary principle and therefore directed the MoEF to notify the quality standards, including sulphur for kerosene, used for domestic purpose within 16 weeks from the date of judgment and a compliance report to be filed after the stipulated period.

Accordingly, the application was allowed with no order as to costs.

S. Nagarajan
v.
The District Collector & Ors
Application No. 174/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Tree Cutting
Decision: Dismissed
Date: 1 September, 2016

JUDGMENT

This application was filed praying for an injunction against Respondents No. 1-5 from cutting of trees near the Nandheeswarar Temple in the Kancheepuram district and from granting permission to construct concrete floor in the temple premises. The Executive Officer of the Temple replied that Nandheeswarar Uzhavarappani Mandram, of which the applicant was the President, had planted flower plants and created a Nandavanam in the Temple. It was however denied that temple authorities were planning to cut trees or raise any concrete floors in the temple.

The respondent submitted that no trees would be cut as would no concrete floor be put up inside the temple, which was a sufficient statement to meet the applicant's request. Accordingly, the application was disposed of with a direction that the authorities should not attempt to cut any trees and remove vegetation or put up any concrete platform in the temple premises which would be detrimental to the environment. Directions were also given to plant more trees in the area and see that the plants were regularly watered and protected.

N. Muthukumar

v.

The Chairman, Tamil Nadu Pollution Control Board & Anr

Application No. 199/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Coconut Coir Industry, White Category, Consent
Decision: Allowed
Date: 1 September, 2016

JUDGMENT

This application was filed seeking a direction for the respondents (State Pollution Control Board) to frame guidelines pertaining to Coconut Coir Industries and the manufacturing and pith units operating in Tamil Nadu, within a stipulated time as nearly 5000 units of such nature were operating without obtaining consent from the Board. The Tribunal was satisfied that there existed a substantial question connected with the environment and ecology to be decided by the Tribunal and the application was admitted.

According to the applicant, the units were categorized in the white category industry by the MoEF & CC, the pollution index of which was less than a Green category industry and even though such units were operating at a small scale, the operation of a large number of units affected the environment.

In its reply, the Board submitted that in respect of S. Muthu Kadaiur, Tirupur Vs. The District Collector, Tirupur and Others, (OA 73 of 2014) it had taken a stand to set important pollution control measures to be taken for arresting the dust and erecting concrete platform so as to avoid seepage of the contaminated water. But it remained a fact that as on date, the Board had not framed any guidelines in respect of the Coconut Coir Industry.

In view of the same, the application was disposed with a direction to the Board to frame appropriate guidelines in respect of the Industry with all stipulations required for the purpose of preventing pollution and such guidelines should be framed within a period of 6 weeks from the date of receipt of the order so as to enable the stakeholders to approach

the Board for consent. . It was also stated that after framing such guidelines, the same should be widely published throughout the State so as to enable the stakeholders to approach the Board for consent.

With the above direction, the application was disposed of.

M. Saravanan
v.
The Secretary to Government of Tamil Nadu & Ors.
Application No. 102/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Road Widening, Tree felling, Wildlife Sanctuary
Decision: Dismissed
Date: 1 September, 2016

JUDGMENT

The application challenged the illegal widening of 35 km stretch of road which led to felling of large number of trees in the Megamalai Reserve Forest adjoining the Megamalai Wildlife Sanctuary in Theni District. As per the applicant, the area was part of the ESZ of the Sanctuary and Periyar Tiger Reserve which supported rich wildlife. It was the case of the applicant that the State Highway Department (Respondent No. 6) cut down nearly 150 trees in the reserved forest for the widening of the road without obtaining any legal permissions for the same. This area being a Reserved Forest and classified as forest attracted the provisions of Forest (Conservation) Act, 1980. Therefore, any kind of non-forestry activity such as widening of road was undoubtedly prohibited.

The apprehension of the applicant was that the road widening work was not only illegal but also detrimental to the local flora and fauna and would lead to degradation of the green cover and loss of ecology. In reply to the application, the District Collector submitted that as per the revenue records the said land was "poromboke land pathai" which was handed over to the State Highways in pursuant to the announcement made by the Chief Minister of the State in 2012. It was due to the damaged condition of the road from Chinnamanur and Megamalai which led to the present proposal of road widening. It was further alleged that the road was not part of the Megamalai Reserve Forest and had been in existence since prior to the enactment of the Forest (Conservation) Act, 1980 and therefore the same would not apply to it. Further, permission for road widening and tree felling was obtained under the Tamil Nadu Hill Area (Preservation of Trees Act) 1955.

The question to be considered by the Tribunal was as to whether the said road widening was detrimental to the surrounding environment. The records placed before the Tribunal and the reply filed by the Wildlife Warden made it clear that the proposed expansion did not involve forest land and was confined within the existing right of way. Further, only non-schedule trees were required to be cut in the process. However, since 29 kms of stretch was part of the ecologically sensitive area of the Western Ghats, the question was whether EC was required for the same. The Tribunal analysed that under 7 (f) of the Schedule to the EIA Notification, 2006, State Highway expansion projects falling in hilly terrain or ecologically sensitive areas are required to obtain EC. However, the Tribunal found that the widening of road in the present case did not amount to expansion as the widening was being undertaken within the limits of the right of way and therefore did not require EC. It further held that the said road existed for a long time and was required to be maintained for use by the local villagers, the same to a certain extent would cause negative impact to the surroundings but a holistic approach had to be taken considering the needs of the local inhabitants. To ensure no damage should be caused to the environment of the area, the Tribunal issued certain directions which included that the widening to be allowed only within the boundaries of the right of way and not beyond, forest boundaries to be demarcated, existing vegetation except the felling permitted for right of way to remain intact, declaring of Silent zones, restriction to speed limit, regulation of commercial/tourist vehicles, compensatory afforestation in lieu of the trees cut etc.

With the above direction the application was disposed of.

Old Cross Fishing Canoe Owners Co-op Society Ltd. & Anr.
Vs.
The Mormugao Port Trust & Ors.

Appeal No. 10/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, Capital Dredging, Maintenance Dredging, Public Hearing, Precautionary Principle, Transparency, Accountability
Decision: Allowed
Date: 2nd September 2016

JUDGMENT

The appeal was filed challenging the EC granted by MoEF for the capital dredging activity at Vasco-da-Gama, Mormugao, Goa to Mormugoa Port Trust. The appellants submitted that the proposal by MoEF to deepen the existing navigation approach channel in Vasco bay to allow larger capsize vessels into port area would result in adversarial changes in the environment and the livelihood of local fishermen community. The Tribunal, in view of the urgency expressed by the Appellants, had issued an interim order on 04/05/2016 in which it declined to stay the ongoing dredging activities but the Port Trust was put to some terms for carrying out the proposed dredging activities. Also, the Tribunal vide its order dated 04/05/2016 constituted a Committee to ascertain the environmental impacts of the project.

There were two main contentions by the appellants. First, it was contended that the exemption from the public hearing granted by the MoEF, by amendment of approved ToR, was illegal as the EIA Notification lays down the exemption from public hearing by operation of law itself and the Notification does not provide any authority to the MoEF to exempt any project from public hearing/consultation on case to case basis. In support of this argument, it was submitted that the exemption as covered under Para 7 III Stage (3) (i) (cc) of the EIA Notification was for maintenance dredging and the dredged materials was disposed which was not the case in the impugned EC granted by MoEF to Respondent

No.1. The Appellants further contended that the MoEF by way of granting exemption to the project from public hearing had subverted the legal rights of the local people related to environment as their opportunity to raise their apprehensions and grievances was declined. The second limb of the contention raised was that the procedure contemplated under the EIA Notification 2006 was not strictly adhered to. The issues raised by Goa Coastal Zone Management Authority ('GCZMA') were not addressed either in the EIA report or appraised by EAC while granting the EC. It was further contended that the Port Trust was granted the EC on 09/02/2016 but the actual dredging activities had commenced from 01/01/2016.

In response to the appeal, the Port Trust highlighted the importance of the proposed capital dredging activities and submitted that the project would increase the cargo traffic in the Port which would lead to overall socio-economic development of the region. It was also submitted that the respondent had carried out the necessary EIA studies and the same were duly considered by the EAC. It was further contended that the MoEF had taken a conscious decision to exempt the project from public hearing based on its own understanding of the project and that this decision at the most could be a possible error of MoEF under the EIA Notification. Thus, it submitted that a genuine error on the part of MoEF cannot be a reason to quash the impugned EC and the balance of computing interests weigh towards the respondent as 65% of the work was completed and more than Rs. 193 crores worth work orders had been issued. The said respondent also contended that the committee appointed by the Tribunal, vide its interim order dated 04/05/2016, had opined that in order to understand long term impact certain specific studies needed to be carried out and the Tribunal can wait till such reports were available and the allegations of the Appellants regarding long term impacts could be verified through such studies.

Based on the above contention, the Tribunal opined that the only point which required determination for the present adjudication was whether the exemption given to the project from conducting the public hearing was valid, legal or otherwise. To this, the Tribunal was of the view that the order by MoEF granting exemption to the Port Trust from public hearing was without any valid reason as the exemption under Para 7 of the EIA Notification applies to only maintenance dredging projects where the dredged material had be disposed within port limits and under the present case the project was capital dredging and the dredging material was not disposed within the port limits. Therefore, the Tribunal opined that such an exemption was contrary to the statutory provisions of the EIA Notification 2006 and EC granted on the basis of such exemption was liable to be set aside and quashed. The Tribunal also accepted the contention of the Appellants that if the Public hearing was conducted, the affected people would have had the opportunity to raise the objections regarding their livelihood and environmental concerns. The Tribunal held that public consultation was a crucial and important element of the environmental appraisal process and the exemption from public hearing had

infringed fundamental right of the concerned persons and had deprived just and fair opportunity which made the impugned EC arbitrary. The Tribunal noted that various environmental impacts enumerated in its interim order dated 04/05/2016 were not adequately addressed in the EIA report and that MoEF/EAC and the EIA report was not prepared without including comprehensive study of environmental impact of capital dredging. Further, the Tribunal reminded MoEF of transparency and accountability in public discourses and considered the present case fit for invoking the precautionary principle. The Tribunal recorded and issued directions to MoEF that whenever application for grant of EC was sought, it must keep in mind the precautionary principle and examine all aspects of the project before granting any such permission. The said exemption was also issued without approval of the EAC and not put in the public domain, which was outside MoEF jurisdiction and authority and in such a case, the Tribunal noted that the logical consequence was to quash the order.

The Tribunal stated that the exemption was without any authority of law and this made the EC invalid. Considering the same, the plea of public project, project delay etc. could not be followed. In view of the same, the Tribunal quashed the exemption order and consequently the impugned EC dated 09/02/2016 was also quashed and set aside. The Tribunal remanded the matter back to the MoEF. Further, it directed the Port Trust and MoEF to pay costs of Rs.2 lakhs each to the appellants and not to proceed with the dredging activity except as provided in this order.

Accordingly, the appeal was disposed of.

Wilfred J & Anr

v.

Ministry of Environment and Forests

Original Application No. 74 of 2014

Wilfred J & Anr

v.

Ministry of Environment and Forests

Appeal No. 14 of 2014

A. Joseph Vijayan & Ors

v.

Union of India & Ors

Appeal No. 71 of 2014

AND

Anto Elias

v.

Union of India & Ors.

Appeal No.88 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Environment Clearance, CRZ Clearance, Port Construction, Doctrine of Public Trust, Delegated Legislation, Sustainable Development
Decision: Dismissed
Date: 2 September 2016

JUDGMENT

The applications/appeals were filed challenging the construction of the Vizhinjam International Deepwater Multipurpose Seaport project which was proposed to be developed at Vizhingham in Thiruvananthpuram District of Kerala. The Government of Kerala appointed Vizhinjam International Sea Port Limited (VISL) as the nodal agency to develop a transhipment terminal in Kerala. The multi-purpose sea port project was conceptualized in three phases and involved construction of quays, terminal area, and port building.

The original application was filed seeking directions for protection/preservation of the 'coastal areas of outstanding natural beauty' and 'areas likely to be inundated due to rise in sea level due to global warming' along the coastline of India including the Vizhinjam coast and to declared as CRZ-I areas (mainly the categories which were deleted from the classification of CRZ-I areas in Para 7 (i) of the CRZ Notification, 2011). The applicant contended that the deletion of the said category (which was previously there in the CRZ, Notification 1991) from the 2011 Notification was violative of Articles 14 and 21 and against the principles of sustainable development, precautionary principle and public trust doctrine. The respondents on the other hand argued that the applicants by way of this application were intending to seek amendment of the CRZ Notification, 2011 by praying for re-insertion of certain words which have been specifically excluded by the MoEFCC based upon the recommendations of the Expert Committee headed by Prof M.S. Swaminathan. The respondents further alleged that the application was time barred as the applicant had approached three years later since the issuance of the said notification which was not permissible under section 14 of the NGT Act.

The appellants who challenged the EC/CRZ clearance dated 03.01.2014 granted to the project by MoEFCC questioned the veracity of the EIA report and termed it as inadequate, incorrect, unscientific and misleading document. The appellants further submitted that the EAC was required to reject the proposal at the scoping stage itself considering that the location chosen for the project of such magnitude was highly sensitive. Thus, it was argued that the entire process of EC right from the stage of scoping was vitiated as the EAC did not apply its mind and failed to determine the TOR's considering the long term impacts of the project on the environment. In addition, it was also pointed out that there was substantial difference between the draft and final EIA, that the objections made by the affected people were overlooked by the EAC and that the version of the project proponent was accepted as gospel truth without independently verifying the claims. It was contended that the project would adversely affect the habitation and livelihood of the fishermen community and that the MoEF while granting approval to the project had not considered the disastrous effects of the project on the pristine marine environment/fishing activity, and the fragile coastal lands.

The respondent project proponent raised preliminary objections with respect to limitation (delay in filing of the appeal), territorial jurisdiction (petitions cannot be entertained by the Principal Bench at Delhi as the cause of action had arisen in Kerala),

and maintainability (the Tribunal does not have the power to examine the constitutional validity of CRZ Notification, 2011) and the Chairperson is not vested with the powers to transfer/or seek transfer of cases from the regional benches. However, all the said objections were negated by the Tribunal and the matter was heard on merits.

The Tribunal held that it was beyond its jurisdiction to direct that the area concerned be protected as CRZ-I since the said category was consciously deleted in the subsequent Notification and inclusion of the same was not within the domain of the Tribunal. It further held that since the CRZ Notification 2011 is in the nature of delegated subordinate legislation under the Environment (Protection) Act, 1986, the Tribunal does not have power to question its validity or add/insert words to it. The tribunal then dealt with the question of whether the lateritic cliffs at the project site were of outstanding beauty, by looking at their distribution, composition, status, and role in maintenance of coastal integrity – and concluded that the cliffs per se were not habitat of any floral and faunal biodiversity and therefore no adverse impact on terrestrial or aquatic eco system was anticipated. It was also held that in order to be a geomorphological feature covered under 7(i)(A) of the Notification of 2011, a feature must maintain the integrity of the coast, which the lateritic cliffs were believed not to contribute towards. The next question for the tribunal's deliberation was whether the Kerala CZMP of 1996 would be applicable, under which the project area was covered under CRZ I (i). The tribunal held that the maps were applicable only to the extent that it did not contravene Notification of 2011, and therefore it could operate only to demarcate areas protected under the Notification, and in any case the category in question was not properly demarcated therein. Further, the the Kerala CZMP was subordinate to the Notification of 2011 in which case it was required to be in accordance with the existing Notification of 2011. The next contention of the applicants was that the port should not be located at the concerned site, to which the tribunal found that a port was not a prohibited but a regulated activity even under the Notification of 1991. Further, the Tribunal rejected the argument of the applicant that the proposed site was highly eroding in terms of Clause 3(viii) of the Notification of 2011, which prohibits setting up of ports in such regions as the site was found to be in a low erosion zone. Moreover, the tribunal held that the MoEFCC/EAC had considered in detail any adverse effects on the shoreline changes that would occur as a consequence of the port, and that the site was the most suitable amongst the other possible options.

The Tribunal observed that the issues/objections raised at the public hearing were incorporated in the final EIA report. The appellants had also submitted that the PP had arbitrarily/without notice altered Form – I on the basis of which the ToR were granted. However, the tribunal rejected the argument observing that the changes made were neither substantial, nor of a nature to vitiate EC. The tribunal went on to reject the argument that the project would be detrimental to the life of endangered species in the coastal area, acknowledging that while conservation of species of turtles including Olive Ridley and species of fish was important, a project of strategic nature would be beneficial. The principle of sustainable development was followed to reach such a conclusion, and in any case the appellants were unable to show that any plant or animal species was

endemic to the project area. The argument of the appellants that the modelling study of the project on the basis of which EC was granted was faulty, was rejected for lack of substantial evidence.

The tribunal held that the Doctrine of Public Trust relied upon by appellants did not apply to the present case as the said principle does not apply to any situation covered by legislation or a regulatory framework and moreover, the public resources were diverted for larger public interest and not for private/commercial gain. Further, the tribunal observed that Clause 7(i) III (vii) of the EIA Notification 2006 requires the proponent to address all material environmental concerns and make appropriate changes in the draft EIA and EMP, and therefore changes made on completion of the process to the final EIA Report were permissible under law. The distinction between financial viability and economic viability of a project was drawn out by the tribunal – the former was defined as financial profitability from the point of view of an individual, while the latter was described as cost benefit analysis from a societal perspective. This distinction was made to strike down the argument that the project was not financially viable, while demonstrating that the balance that has to be struck is between economic development and environment cost. The Tribunal stated that the environmental cost in the present project was minimal as there were no rare species or ecologically sensitive areas at the project site. The fact that another port could potentially come up was rejected as a ground to challenge the EC, as the Enayam Port was yet to prove its economic viability.

Accordingly, the tribunal declined to grant any reliefs to the applicant/appellant, however it constituted an Expert Committee to oversee compliance of conditions in the EC and CRZ clearance, establish a mechanism for monitoring shoreline changes, protection against coastal erosion, ensuring sewage management and dredging in the shipping harbour, monitoring air quality and rehabilitation programmes.

Accordingly, the application/ appeal were disposed of.

Upendra Prasad Pandey
Vs.
Union of India & Ors.

Original Application No. 342/2014 (CZ)

Coram: Justice Mr. Dalip Singh, Dr. S.S. Garbyal
Keywords: Coal power plant, Ash pond, Water pollution**,** Compensation
Decision: Disposed
Date: 5 September 2016

JUDGMENT

The application was filed by the applicant aggrieved with the location of the ash pond of the coal based captive power plant of Hindalco Industry based in village Orgari, M.P, which was altered from the site for which draft EIA report and public hearing was held and constructed on a different location without complying with the guidelines and notification of the MoEF & CC. In light of the same, it was prayed to abstain the Respondents from disposing of fly ash slurry into the illegal fly ash pond, which was initially constructed as an irrigation dam, thereby causing air and water pollution and shift the fly ash pond to its suitable site at village Gangi as per the lay out plan in the EIA report prepared for the project.

The Respondent company submitted that the location was altered to reduce the project area from 2000 hectares to 1500 hectares at the instance of the MoEF & CC and in accordance with the revised plan approved in 2009. They also stated that no fly ash was disposed off in the open as close tankers and trucks were being used to transport it to various industries.

The Tribunal held that since the application is time barred as it was filed after five years of the grant of EC to the project, it would be improper to direct shifting of the fly ash pond to a new site. However, it considered the other aspects with respect to the compliance of the EC conditions which stipulated proper utilization of fly ash as per the notification issued by the MoEF&CC in 1999 and subsequent amendment in 2003 and development of green belt in 500 ha out of 1500 ha area to mitigate the impact of fugitive emissions as

per the CPCB guidelines. The Tribunal also considered as to what extent the pollution caused by the operations of the industry could be mitigated in light of precautionary principle and the extent of the developmental activities carried out by the respondent company for the benefit of the affected villagers.

The Respondent Company was directed to construct a school which was agreed to be built within the plant site at a distance of 600 meters from the ash dyke and in conformity with the guidelines of the Sarvashiksha Abhiyan and to take plantation in the remaining green belt of 226 hectares till the monsoon of 2017. The respondents also confirmed that they have undertaken payment of compensation to the tune of Rs. 49,95,789/- to the affected farmers and set up online air, water and process stacks monitoring stations and disposing the entire fly ash in dry form to the nearest cement companies.

Accordingly, the application was disposed of with no order as to costs.

M/s. Sri Vignesh Minerals
Vs.
Union of India & Ors.
Application No. 206/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: De-silting, EC
Decision: Disposed
Date: 8th September 2016

JUDGMENT

Herein, the Government had taken steps to de-silt the irrigation channels and the de-silting material was sought to be removed by the applicant. It appeared that the Government insisted on Environmental Clearance for the same. It was subsequently brought to the notice of the Tribunal that Clause 6 in the Appendix-IX of the amended EIA Notification dated 15.01.2016 which exempted the de-silting of dams, reservoirs, rivers for the purposes of maintenance, upkeep and disaster management from the requirement of EC. Based on this observation, the applicant made a representation the Director of Mines and Geology for the purpose of getting necessary permission to remove the material without insisting for prior EC.

In these circumstances, the Tribunal directed the Director of Mines and Geology to consider the application and pass appropriate orders on merit. It also clarified that the removal of the already de-silted material should only be in respect of the canals passing through the extent of the land which was mentioned in the representation and in the guise of the same, no one should be permitted to mine or remove any other materials. It also issued directions to the department to strictly monitor the activity.

With the above direction, the application was disposed of.

M/s. Anjan Drug Pvt. Ltd.
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No. 31/2014 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Closure, Carbon, Disconnection of electricity
Decision: Allowed
Date: 9th September 2016

JUDGMENTS

This application was filed to quash the order passed by the Tamil Nadu Pollution Control Board whereunder the applicant unit was directed to be closed with immediate effect. Pursuant to the order, the electricity connection was disconnected but was restored following an interim order.

Pursuant to the directions of the Tribunal, the Pollution Control Board was directed to file the status report with regard to the correctness of compliance of conditions undertaken by the applicant industry and it was observed that the unit had installed TDS meter and pH meter in the storm water drain and that there had been a reduction in the carbon deposition. It was also submitted that the applicant unit was a fully non-polluting and compliant unit and under such circumstances, the application was disposed of, making it clear that the industry was entitled to continue the operation. However, directions were given to the respondent Board to inspect the unit periodically and monitor the operation of the unit.

Accordingly, the application was disposed of.

Mr. Kumbeswaran
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No. 204/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Hot Mix Plants, Blue Metal Stone Crushing, Siting
Decision: Disposed
Date: 9 September, 2016

JUDGMENT

In this application, the applicant questioned Clause (a) in the Guidelines for Hot Mix Plants issued by Tamil Nadu Pollution Control Board on 29.07.2016, which stated, "No hot mix plants should be allowed within 500 meters from the approved habitation layouts." The applicant's grievance was that it should be more than 500 meters as he believed that people who visited the nearby Ashram, of which he was a regular visitor, would be affected by the dust and fumes from the plant.

The Board, on the other hand, submitted that the 500 meters criteria had been fixed on the guidelines framed for the Blue Metal Stone Crushing Unit. On a reading of the said clause what is contemplated is that no Hot Mix Plant will be allowed within 500 meters from the approved habitation or approved layout. The guidelines were contradictory in nature and it was always open to the Pollution Control Board to increase the distance beyond 500 meters depending upon the facts of the cases. However, it was clarified that it should not be less than 500 meters at any point of time.

It was also clarified that the order was made on the facts of the present case and should not be taken as a direction for the Board to take action against the existing units. Accordingly, the application was disposed of with the above direction.

M/s. Roma Industries
Vs.
The State of Telangana & Ors.
Application No. 208/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Waste Management, Bio-Medical Waste
Decision: Disposed
Date: 14th September 2016

JUDGMENT

This application was filed to challenge the order of consent given by the Board and authorization under the Hazardous Wastes (Management, Handling and Transboundary, Movement) Rules, 2008 and Bio Medical Wastes Management Rules, 2016, in so far as it related to a clause in the consent order, which stated that permission to collect bio-medical waste in HCE was granted to the applicant only in respect of Nalgonda District. It further stated that in respect of such permission for other two districts, the same would be considered as and when the bed strength increased in the said areas in accordance with the guidelines issued by the Central Pollution Control Board.

Even though the Board had taken objection regarding the maintainability of the application on both limitation and jurisdiction, considering that the relief was restricted, the Tribunal was of the considered view that the application could be disposed of with a direction to the State Pollution Control Board to consider the representation of the applicant and pass appropriate orders within a period of weeks from the receipt of the copy of the order.

Conservation of Nature Trust
v.
The District Collector & Ors.
Applications No. 104/2013
Conservation of Nature Trust & Anr.
v.
Ministry of Environment and Forest & Ors.
Applications No. 111/2013
Conservation of Nature Trust & Anr.
v.
Ministry of Environment and Forest & Ors.
Applications No. 112/2013
Conservation of Nature Trust (Registered)
v.
National Highways Authority of India & Ors.
Applications No. 116/2013
And
D. Sulif
v.
The Government of India & Ors.
Applications No. 127/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: EC, National Highway, Limitation, Jurisdiction, Precautionary Principle, Re-appraisal
Decision: Partly allowed
Date: 14 September, 2016

JUDGMENT

In this case, the applicants had challenged the EC granted by the MoEF & CC in respect of the proposal of National Highways for the purpose of widening NH-47 and NH-47B, for the project of 4/6 lining of package of a certain amount of distance from Kerala/Tamil Nadu border and the road deviating from Pungarai Hamlet to Kollakudivilai Hamlet. The applicants prayed for quashing the EC granted by MoEF & CC, notification issued under

Section 3-A of the National Highways Act, 1956 in respect of land acquisition and directions to forbear the respondents from laying any road and destroying seven system tanks. According to them, the deviating road was affecting several natural springs, ponds, temple tanks and the highly fragile Valliyar River Valley resulting in deprivation of storage and free flow of water and affecting sensitive ecology of the Kanyakumari District. Further, the deviated road was bound to create massive land filling for formation of the road and would also affect the socio-economic conditions of many houses and small-scale industries. All these applications were originally filed as Writ Petition in the Madras High Court but were subsequently transferred to the Tribunal.

While denying the allegations made by the applicant, the District Collector stated that the project of laying the road was in public interest and in that process, certain trees had to be cut and NHAI had agreed to plant sufficient trees to maintain the eco-system and environment. It was further alleged that the land acquisition proceedings were near completion and at the "Award" stage. It was also alleged, by the Project Developer, that the project would not affect the seven system tanks and would not hamper the existence of drinking water structures or lower the ground water table. The Board stated that it had returned the application for Consent for want of EC from the MoEF & CC. It also stated that at the public hearing the applicants had raised their concerns which was incorporated and the EC had been issued stipulating necessary conditions for environmental safeguards. It was the respondent's case that the applicant had some personal propaganda against the project. The project proponent questioned the application on the grounds of jurisdiction stating that the applicants ought to have challenged the project in the Tribunal instead of the High Court since at that time, the Tribunal was already in existence. However, the applicants in response claimed that the applications since being transferred by the High Court in view of the Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India (2012) 8 SCC 326, the question of limitation at this stage could not be decided.

The Tribunal noted that the main issue to be decided, here, was the maintainability of the applications on the point of limitation and jurisdiction, as well as, the environmental issue.

With respect to the application No. 104 of 2013 was concerned, the same was filed before the High Court when there was no EC granted to the project, Applications No. 111 and 112 of 2013, the NGT noted that the said writ petitions were filed during the interregnum period i.e between the establishment of NGT on 18.10.2010 and the notification dated 05.05.2011 specifying the place of sitting of the NGT, the applicants had no other option than to approach the High Court. The other two applications 116 and 127 challenged the EC dated 09.09.2010 in the High Court on 25.07.2011 when the NGT was already functional in Delhi and there was no impediment in challenging the same before the Tribunal. The Tribunal noted that in the latter applications the applicant could not even take the benefit under section 38(5) of the NGT Act, 2010. Thus, these two applications

were dismissed as not maintainable and beyond the period of limitation. The project proponent had argued that the remaining of the applications had challenged the land acquisition proceedings which was not under the Acts mentioned in Schedule to the Act. However, the Tribunal rejected this plea on the grounds that there were other prayers in the petition related to environmental protection of the area and that since the High Court had transferred the matters to the Tribunal, the same should be entertained. Thus, the applications no. 104, 111 and 112 were held maintainable.

While deciding the matter on merits, the Tribunal noted that the scoping and public consultation process undertaken for the EC were proper and did not suffer with any infirmities. However, while analyzing the appraisal stage, the Tribunal found that though the EAC had taken into consideration various aspects of the project proposal including trees to be cut, replantation proposal, compensation to the displaced, the EAC failed to consider the issues raised by large number of people in the public hearing with respect to the deprivation of large number of water bodies/ponds affected by the project. The Tribunal noted that the EAC did not apply its mind and independently looked into the claims of the people with respect to the impacts of the project, the appraisal could not be said to be in conformity with the spirit of the EIA Notification, 2006. It further noted that Kanyakumari being a significant place in terms of geography, the EAC ought to have taken into consideration the existence of large number of water bodies in the area and have been more careful in scrutinizing the EIA report as well as public consultation process.

Referring to various judgments passed by the Supreme Court, the Tribunal emphasized on the protection of the water bodies and other natural resources as integral part of Article 21 of the Constitution. Since the other portions of EC process were found to be in accordance except the stage of “Appraisal”, the Tribunal instead of quashing the EC directed for suspension of the same for six months for reappraisal of the proposal by the EAC.

Accordingly, the applications were partly allowed.

G. Abhimanan & Anr.
Vs.
Union of India & Ors.
Application No. 98/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarrying, EC
Decision: Allowed
Date: 15th September 2016

JUDGMENT

In this application, the applicant prayed for a direction against the District Authorities not to grant any permission for quarrying of sand, gravel or any material at Periya Eri in the Thiruvallar District without prior Environmental Clearance.

It was admitted that the quarrying of sand in Tamil Nadu was being done only by the District Collector, who clarified that the applicant had misapprehended that the DC had gone ahead with the grant of quarrying permission without obtaining clearance.

The Tribunal referred to its earlier directions passed in D. Gopinath vs. The District Collector, Thiruvallur (Application No. 131 of 2015) wherein it stated that so far as removal of sand was concerned, the preferential right was to be given to the local people and only after exhausting their rights, the District Collector could grant permission to the third parties.

In view of the categorical stand taken by the District Collector, the application had to be closed as it was made clear by the District Collector that without obtaining EC no permission would be granted to anyone for the purpose of quarrying.

Accordingly, the application was disposed.

Mr. Gireesh
v.
Union of India & Ors
Application No. 390/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Man-Made Canal, CRZ
Decision: Dismissed as infructuous
Date:15 September, 2016

JUDGMENT

In this application, the applicant prayed for directions against the 5th and 6th respondents which had put up structures, namely, Canoly, a man made canal, prohibited under the CRZ notification, which was further confirmed by a site inspection report. It was also observed that the canal, situated in the Thanur area, was within 50 meters from the HTL of the sea.

On the facts of the present case, the respondents contended that all development activities carried out by the 5th and 6th respondents within the dispute zone had been removed and the Tribunal was of the considered view that no further adjudication was required on the basis of the relief claimed by the applicant.

Accordingly, the application stood dismissed, as the relief sought for by the applicant had become infructuous.

R. Murugesan
v.
The District Collector & Ors
Application No. 178/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Charcoal Unit, Air Pollution, Consent
Decision: Allowed
Date: 16 September, 2016

JUDGMENT

The relief claimed in this application was for a direction to the Tamil Nadu Pollution Control Board to lock and seal the Respondent No. 6's charcoal unit and to direct Respondent Nos. 1-5 to take preventive measures to ensure zero pollution.

It was the case of the Respondent No. 6 that he was only the owner of the property and had leased it out to Respondent No. 7 who was carrying on the activity. In its reply, the Pollution Control Board stated that pursuant to the order of the Tribunal, Respondent No. 7 had stopped further activity in respect of the charcoal unit and that on inspecting the unit, it was found that Respondent no. 6 had been burning coconut shell to produce charcoal without taking any air pollution control measures, resulting in emission of thick black smoke and that he had not obtained consent under the Water or Air Act. Upon receiving a show cause notice, Respondent no. 6 informed, during a subsequent inspection that he had stopped the operation of the unit, following the Tribunal's order.

The Tribunal issued directions that, unless the Board was satisfied with the methodology to be adopted for the purpose of containing air pollution and appropriate orders were passed, none of the activities by either of the respondents were to be permitted to be carried out and that the Board was required to ensure compliance of the above order and in the light of the Inspection Report, the Board was directed to take appropriate action, which included prosecution under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 against the violators, in the manner known to law. The Board was also asked to consider the various steps taken in respect of the batch of cases on charcoal (Application No.17 of 2013 etc.,)

With the above direction, the application was closed.

M/s. Empee Power and Infrastructure Pvt. Ltd.
Vs.
The Government of Tamil Nadu & Anr.
Application No. 39/2015 (SZ)

Coram: Hon'ble Justice M.s Nambiar, Hon'ble Shri P.S. Rao
Keywords: Thermal Power Plant, Pollution
Decision: Dismissed
Date: 19th September 2016

JUDGMENT

This application was filed by a Pvt. Ltd company aggrieved by the order passed by the Government of Tamil Nadu dated 10.01.2014 which rejected the prayers of the applicant seeking relaxation of the G.O.M dated 08.05.1998 for establishment of polluting industries within 5 kms of Cauvery river and its tributaries. The applicant intended to establish a Coastal Thermal Power Plant in Nagapattinam District of Tamil Nadu for which he had obtained the ToR under the EIA Notification but had failed to obtain Environment Clearance and had not undertaken any public hearing. In the meanwhile, realizing a prohibition under the said G.O.M, the applicant made a representation before the Government to relax the provisions, which was denied, after which he approached the Tribunal, praying for a direction to the respondents for exemption of the prohibition contained in the G.O.M.

Considering the same, the Tribunal stated that when an application is aggrieved by an order, the remedy is to challenge the same in accordance with the law and even if the impugned order cannot be challenged by way of an appeal as provided under S.16 of the NGT Act, an application under S.14 of the NGT Act is maintainable provided that it is filed within the period of limitation. Therefore, the current application filed more than a year after the impugned order was held to be not maintainable in law. The application was barred by time and therefore, on that sole ground, it was rejected. It also stated that since the intention of the applicant was to get a modification of the G.O.M, the remedy was different and did not involve challenging the impugned order.

Therefore, even on merits, the application was dismissed, but with no order as to costs.

Subbukani
Vs.
Tamil Nadu Pollution Control Board & Ors.
Application No. 278/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Consent, Water Pollution
Decision: Disposed
Date: 19th September 2016

JUDGMENT

The issue in this application related to Unit No. II of the 4th respondent i.e., Supreme Coated Board Mills Pvt. Ltd. which had not commenced operation yet. The subject matter of the dispute in this application related to the consent given by the Board for the running of this unit, which was disposed by the Tribunal.

It appeared that an application had been made by the respondent to the Board seeking consent to establish back in the year 2013, and considering the opposition from the public with regard to the unit which apprehended underground water table pollution detrimental to the fertility of the soil, the application was filed to prevent the project proponent from establishing and operating the said unit.

The State Pollution Control Board stated that the 4th respondent's unit had been under establishment for a long time and its consent to establish issued had expired and that since the case was pending in the NGT, the authorities had decided not to process the application. Therefore, it was made clear that the consent application was not being processed due to the pendency of the current application.

In view of the same, the Tribunal directed the Board to consider the objections raised by the applicant and the public in respect of the unit before any order was passed by the State Pollution Control Board. Accordingly, the application was disposed of with the above direction.

K.K. Babu
v.
Union of India & Ors
Application No. 310/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Coastal Regulation Zone, Construction
Decision: Dismissed
Date: 20 September, 2016

JUDGMENT

This application was filed seeking a prayer to set aside Ex. P5, which was the building permit issued by the Kumbalanghi Gram Panchayat (6th respondent) and for a direction to demolish the wall stated to have been put up by the 7th respondent. To substantiate his contention, the applicant relied on Ex. P6, the original tax receipt issued by the Village Officer, wherein there was no mention about the Survey in question. On the other hand, the 7th respondent filed the extract of the receipt, which contained the disputed survey no. as Pattadar property.

What was challenged in this application was the building permit issued by the 6th respondent Panchayat, which clearly gave the condition that, the 7th respondent was entitled to put up a restraining wall to the extent of 56.30 meters. It was clearly stated by the Sub Collector that the Taluk Surveyor measured the property and the 7th respondent was in possession and enjoyment of 14.07 cents of the said property. It was further submitted that after receiving the complaint from the applicant, adequate steps were taken by the 4th respondent to see that no revenue land was encroached for any illegal or unauthorized construction to be done. Further, it was also observed that no further action needed to be initiated by the 4th respondent.

The 6th respondent, the Panchayat, stated that it had never permitted that 7th respondent to construct the retaining wall encroaching the government property and had threatened to take appropriate action against the respondent in case of such encroachment.

However, the Tribunal did not see any encroachments made in respect of running water and did not understand why it was categorized as CRZ III as stated by the Coastal Zone Management Authority. However, it left it to the Authority to decide the same in an

appropriate manner and take a decision. With regard to the facts of the case, the Tribunal was of the view that considering that the building permit issued by the Panchayat was not within the jurisdiction of the Tribunal and that there was no environmental issue involved in the case, the applicant could not be given any relief in this application. Except making an application to the Coastal Zone Management Authority, the applicant was not entitled to any relief.

Accordingly, the application was disposed off, with the above direction.

Venugopalapuram & Nateson Nagar Plot Owners' Welfare Sangam
Vs.
Government of Tamil Nadu & Ors
Application No. 121/2016 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Contamination, Ground Water, Consent
Decision: Dismissed
Date: 20 September, 2016

JUDGMENT

This application was filed for direction to the respondent authorities to take action against the respondent unit running the business of washing of vehicles for contaminating ground water and carrying out operations in the residential area without prior consent or EC from the Pollution Control Board. When this application came up for admission, a temporary injunction was granted against the respondent unit from carrying on its activities.

The Board in response stated that the waste water generated during washing was disposed in the unit's own land without any previous treatment and upon inspection, it was noticed that the unit was operating without consent. Hence, a show cause notice was issued by the Board in reply to which the unit submitted that it was a small unit, employing only one laborer and water let out from the service station was minimum and further assured to adhere to the Board rules and regulations. After submitting an application for consent, further inspection was carried out during which it was found that the unit had stopped the washing activities and was not under operation. It had also provided a collection, setting and clear water storage tank for the treatment of wash water. The Board further considered that the unit was located in a Mixed Residential Zone as per CMDA where such activity was permitted. Subsequently, the Unit was granted consent subject to the condition that the treated trade effluent would be utilized for gardening purposes.

The respondent unit contended that there was a dispute in constructing a compound wall with a member of the applicant association and such enmity had led to the application being filed. the respondent further denied any allegations with respect to contamination

of ground water and relied upon an analysis report of the Metropolitan and Sewerage Board which showed the water samples within the permissible levels.

The Tribunal noted that the applicant was aggrieved with the unit being operated without prior consent or EC. However, it was noted that no EC was necessary to run the business of water washing of 2/4 wheelers, employing only one labourer. Further, the unit had obtained consent from the Board during the proceedings of the application and therefore the applicant was at liberty to challenge the same. Furthermore, the presence of harmful chemicals in the underground water could not be linked to the washing of vehicles and in such circumstances, the Tribunal found no reason to restrain the respondent unit from running its business. Accordingly, the application was dismissed.

Dr. Premchand
v.
Pattanakkad Grama Panchayat & Ors
Application No. 13/2014 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Coastal Regulation Zone, Construction
Decision: Partly Allowed
Date:20 September, 2016

JUDGMENT

This application was filed seeking directions to set aside the order passed by the Pattanakkad Gram Panchayat, directing demolition of the construction made by the applicant alleging that it was in violation of the Coastal Regulation Zone Notification (CRZ), 2011 and the provisions of Kerala Panchayat Building Rules, 2011.

The applicant contended that the building was not within 200 meters of High Tide Line and hence, not in violation of the Notification and since the new Coastal Management Plan under the notification had not come into effect, the question of whether the building fell into the prohibited area could not be settled. He also contended that the Panchayat had no jurisdiction to consider the question of violation of CRZ Notification as it vested with the Kerala Coastal Zone Management Authority.

The Tribunal held that only the Coastal Zone Management Authority could decide whether there was any violation of the Notification. According to the judgment, the applicant was to approach the Authority within a period of 6 weeks from the date of filing the application for the Authority to decide whether the construction was in contravention of the provisions of the Notification. Thereafter, the Authority would give notice to the applicant and the Panchayat and pass an appropriate order in accordance with law.

The Tribunal stated that the challenge was only with regard to the finding on the violation of the provisions of the CRZ Notification and that the impugned order was passed not only for violation of the CRZ Notification but also for the violation of the provisions of the Kerala Panchayat Building Rules. The Tribunal, subsequently, restricted the question only with regard to the violation of the CRZ Notification and decided that the applicant's argument had no merit, considering that the CRZ Notification specifically provided that

till the CZMP under the 2011 notification was formulate, the one prepared under the 1991 Notification would be valid.

Therefore, the impugned order for demolition of the building passed by the Gram Panchayat for violation of the CRZ Notification was set aside and the application was disposed of, accordingly.

Chadha Papers Limited

v.

Uttar Pradesh Pollution Control Board & Anr

Appeal No. 19 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Consent to operate, Ground water, Precautionary Principle, Rule of Mischief
Decision: Partly allowed
Date: 20 September 2016

JUDGMENT

The appellant, a company engaged in the business of manufacture of News Print and Kraft Paper, challenged an order passed by the Uttar Pradesh Pollution Control Board ("the Board") withdrawing the consent to operate of the appellant on the grounds that it was in violation of Principle of Natural Justice and arbitrary, since no reasons had been provided for withdrawing the said consent.

The case of the appellant was that it had applied for consent after changing its process from agro based to waste paper. Prior to the consent, the company was having 14 digesters. However, when an inspection was conducted by the Board, it was directed that it should use only 4 digesters for steaming and softening the wet strength paper without using any chemicals or agro waste and the remaining 10 digesters must be dismantled within one month from the date of order. The consent was granted with the said condition. It was the case of the appellant that its company did not use any chemicals leading to pollution and that an Effluent Treatment Plant ["ETP"] had also been installed. Additionally, as directed the appellant company was using only 4 digesters and had dismantled the other 10. Thus, it had complied with the consent conditions.

It was the case of the respondent board that the appellant company was in violation of the terms of the consent to operate, by discharging effluents in the drain, and had not installed other necessary filters and systems. Further, the respondent brought to the attention of the tribunal that a Joint Inspection Team was constituted, which noticed various deficiencies in the operation of the unit, such as poor sludge handling facility and

failure to obtain clearance from the Central Ground Water Authority ["CGWA"] for abstraction of fresh water from borewells. The Committee also noticed significant quantity of 'spent liquor' generated and lying below the digesters in the process of waste paper cooking which was required to be collected and treated in the ETP. The committee therefore recommended that for 'KCB grade waste paper pulping', hydra pulper can be used instead of digesters. The appellant company objected to these reports and alleged that the observations made with respect to replacing/dismantling of digesters was without any basis since the appellant was adhering with all norms.

The Tribunal observed that there was no dispute with respect to the fact that the unit was using significant amount of ground water but had not obtained permission from CGWA. It further noted there were specific recommendations for replacing/dismantling of the remaining four digesters since there was reasonable possibility of the unit misusing the digesters and generate pollution including black liquor with chemicals. The tribunal also took note of the fact that while previous functioning of the unit was not in accordance with law, but in the recent past it had attempted to improve the functioning of its ETP. However, the tribunal noted that the dismantling of digesters was a serious concern in view of the charter of CPCB issued for paper industries, more particularly in Uttarakhand and Uttar Pradesh and was required to be implemented.

The tribunal held the recommendations of the committee legally valid and in view of the precautionary principle. It was held to be the duty of a person who can or causes pollution to take precaution, and the recommendations intended to suppress likely misuse of digesters as daily inspection was not practically possible. Thus, keeping in view the 'Rule of mischief', the tribunal supported the condition relating to dismantling of the remaining four digesters on the grounds that the hydra pulper would be a complete alternative to the use of polluting digesters.

The case of *Khatema Fibres Limited v. Uttarakhand Environment Protection & Pollution Control Board*, relied on by the appellant company, was distinguished on the grounds that in the present case the appellant's conduct was a relevant consideration where the unit had even constructed a bypass to the ETP, and the temporary permission granted for the use of digesters in Khatema Fibres was in view of the facts and circumstances of that case alone where the inspection team did not found it necessary to dismantle the digesters.

The Tribunal therefore upheld the condition of the Board for dismantling of the four digesters and directed the industry to comply with all the recommendations provided in the Joint Inspection Team Report, and obtain authorization from the CGWA within two months, while being permitted to operate for a period of 6 months upon submission of compliance report and subject to surprise inspection by the Joint Inspection team subsequent to which the application for grant of consent to operate was to be processed by the Board.

With the said directions, the appeal was disposed of.

Chaudhary Yashwant Singh
v.
State of Uttar Pradesh & Ors.
Original Application No. 482/2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Stone crushers, Air pollution, Limitation
Decision: Dismissed
Date: 20 September, 2016

JUDGMENT

The Applicant, who claimed to be a social worker, approached the Tribunal against certain stone crushers in the Singrauli/Sonebhadra area, on the grounds that they were operating without consent of the U.P. Pollution Control Board ["the Board"], in violation of the Air (Prevention and Control of Pollution) Act, 1981.

These stone crushers along with other heavy industries, as per the Applicant**,** were causing heavy pollution, and operated in spite of a complete ban on new stone crushers since 2000. The Applicant argued that the ban was not being implemented by local authorities, who lacked technological knowhow and were under qualified.

Further, the Applicant moved the Tribunal against discharge of hazardous wastes from Aditya Birla Chemicals, Rajkiya Nirman Nigam Ltd ["RNN"] and HINDALCO Industries into Renu River and Rihand Dam, which adversely affected human health, flora, fauna and lives of villagers. The Applicant specifically accused RNN of constructing projects without prior permission from the Ministry of Environment and Forests, required under the Forest (Conservation) Act, 1980. Additionally, it was the case of the Applicant that the Govind Ballabh Pant Sagar was adversely affected by silt/ash deposits by NTPC, HINDALCO, LANCO, and Andpara Thermal Power Projects.

The Applicant alleged that HINDALCO transports its coal from NCL fields in an improper manner which leads to pollution. It was also the Applicant's contention that in running its cement factory, M/S J.P. Associates Ltd., had illegally encroached upon forest land, and was responsible for setting up of a coal washing unit without the appropriate clearance from the National Board for Wildlife ["NBW"]/other departments.

It was the case of the Applicant that despite repeated representations to authorities for seeking action against these defaulting agents (U.P. Pollution Control Board, District Authorities, and the industries abovementioned), as well as publicizing the said information in the newspapers and even after holding public agitations, no action was taken by the appropriate authorities.

The Respondents raised objections to the maintainability of the application on grounds of limitation, mis-joinder of cause of action, as well as on the merits of the case.

The Tribunal noted that the application failed to disclose as to when the cause of action first arose. Referring to the cases of M/S Bharat Stone Crusher v. Rajasthan State Pollution Control Board, and Amit Maru v. Secretary, Ministry of Environment and Forests, the Tribunal concluded that it is empowered to condone delay beyond six months and five years but not exceeding sixty days as provided under sections 14 and 15. Further, the Applicant's argument that the case was one of a continuing cause of action giving rise to new periods of limitation was also rejected, on the grounds that even a continuing cause of action would not provide a fresh period of limitation, given that the expression 'cause of action first arose' features under both Sections 14 and 15, which is in clear contradiction with a continuing cause of action. In other words, relying on the decision of The Forward Foundation & Ors v. State of Karnataka, the tribunal held that in a continuing cause of action, limitation trigger from the date the cause first arose, unlike in reoccurring causes of action, where each subsequent violation is a complete cause of action in itself, giving rise to fresh limitation period. Moving to the question of mis-joinder, the tribunal concluded that the Applicant had simply joined diverse causes of actions, non-consequential to each other, as one aspect relates to air pollution by industrial emissions while another deals with transportation, projects constructed without clearance, demand for compensation to villagers, etc.

Finding the application to be vague, generalized, and therefore violative of Rule 14 of the National Green Tribunal (Practice and Procedure) Rules, 2011, which require that an application must be based upon a single cause of action, the tribunal dismissed the application, without any order as to costs, maintaining that such dismissal does not prejudice contentions raised in other connected matters relating to similar questions of environment.

Sushil Raghav

v.

Union of India & Ors

Original Application No. 180 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Environmental Clearance, Purposive Construction
Decision: Partly Allowed
Date: 20 September 2016

JUDGMENT

The applicant was an environmentalist, and had filed the application against construction/allied works for the six lane elevated road linking to NH-24, in the Hindon Bird Sanctuary by the Respondent without any permission. It was prayed by the applicant that existing construction be removed/further construction be stopped, and the bird sanctuary and pond affected be restored to their original position. The applicants argued that the construction raised was illegal for want of EC and there were encroachments upon the ponds and water bodies in violation of the Tribunal's directions. It was the case of the respondent, the project proponent, that environmental clearance is not required since the project is merely an expansion of an existing road, that there was no pond, and no wildlife in the area which has simply been named as a Bird Sanctuary, but has not been notified as such. The other respondents also filed their responses, however the tribunal found inconsistencies in their submissions. Therefore, there were two questions for consideration before the tribunal: first, whether Environmental Clearance ["EC"] was required for the project under the Environmental Clearance Regulations, 2006 ["Regulations"]; second, whether the project was located within a Bird Sanctuary, and the effects of such location.

To answer the first question the tribunal examined the Regulations, and noted that the word 'project' and 'activity' as mentioned in the Regulations must be given the widest possible interpretation, applying the principle of purposive construction, accepted in the case of *Vikrant Kumar Tongad vs. Delhi Tourism and Transportation Corporation & Ors.*" *O.A. No. 137 of 2014.* The Tribunal in the given case applied the test of dominant purpose

or dominant nature and held the construction of bridge to be covered under Entry 8(b) of the Schedule to the Regulations, 2006 for being a construction project having built up area in excess of the threshold limit as prescribed in the Regulations. Thus, the Tribunal held that the construction in question was covered under Entry 8(b) of the Schedule to the Regulations as it was a project of township and area development covering an area in excess of 150000 sq. meters and therefore it was obligatory to obtain EC for the same.

With respect to the second question, the tribunal laid down that the Bird Sanctuary cannot be said to have been declared or notified as such, and therefore was not entitled to protection under the Wildlife (Protection) Act, 1972. At the same time, it was taken into consideration that the Forest Department had expressed a need for developing such sanctuary, and funds were being sanctioned, and therefore indiscriminate construction should not have been raised in the area until the time the question was decided by a competent authority. Also, the Tribunal expressed the need to protect the pond and water body in the area. The Tribunal left upon the State Government to determine the status of the area as a sanctuary and till then it stated that no permission for any construction or encroachment must be given except raising of pillars for construction of the elevated corridor.

Therefore, while the tribunal did not stop the ongoing project or demolish the constructions, but directed the PP to apply for obtaining EC within three months from the date of the order, and thereafter comply with all the directives in the EC without delay/default. Accordingly, the application was disposed.

Bimal Singh Karnawat & Ors
Vs.
West Bengal Pollution Control Board & Ors.

Original Application No. 80/2015 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Air Pollution, Noise Pollution, Environment Clearance, Consents
Decision: Dismissed
Date: 21 September 2016

JUDGMENT

This application was filed seeking relief against the Respondent factory operating in the premises of the applicant for causing pollution generated in the manufacturing process of HD and Polymer products, thereby resulting in emission of bad odour and fugitive toxic emissions. Further, the applicants also pointed out the noise and air pollution caused by heavy machinery and micro plastic particles and contamination of water due to the waste generated by disposal of plastics. They also mentioned that there were no fire safety measures put in place. The applicants submitted that the unit being an "ordinary red" category industry cannot be allowed to operate in a metropolitan area and the same has also not been granted Environment Clearance and Consents and was therefore operating in breach of the Air and Water (Prevention and Control of Pollution) Act, 1981 and 1974 respectively, the Noise Pollution Rules, 2000, the Environment (Protection) Act, 1986, the Municipal Solid Waste (Management and Handling) Rules 2000 and the West Bengal Fire Services Act 1950. Further, they even alleged that such pollution had resulted in the death and illness of family members of the applicants. Thus, the applicants prayed for a direction to stop the operation of the unit.

The Respondents argued that they had all the necessary licenses to operate and that all measures are taken to reduce the use of plastic as raw materials. The Respondents submitted that the unit uses virgin granules for manufacturing plastic jars. The Tribunal for verification of the said fact directed the respondent authorities i,e the West Bengal Pollution Control Board and Kolkata Municipal Corporation to conduct an inspection of the respondent's unit which in its reports observed that the unit was not found using plastic waste as raw material. Thus, based on the said inspection and status reports, the Tribunal determined the question as to whether the unit was engaged in "Manufacturing

and Reprocessing of PVC granules and manufacturing of reprocessed PVC products" and thus falls under Ordinary Red category or the same was engaged in "reprocessing of waste plastic" and therefore was an Orange category unit.

The Tribunal relying upon the inspection reports of the State Pollution Control Board concluded that the unit uses virgin granules which does not come within the meaning of plastic waste defined under Rule 3 (m) of Plastic Waste (Management and Handling) Rules, 2011 due to which the industry would neither fall within the Ordinary Red or Orange category but the Green Category under item "Polythene & plastic processed products manufacturing", which is permitted to be run in the Kolkata Metropolitan Area. The Tribunal also doubted the bonafides of the applicants which only questioned the operation of the said unit of Respondent whereas another unit manufacturing the same products was operating in the said premises which was not challenged by the applicants.

Accordingly, the application was dismissed without costs.

Tribunal On Its Own Motion
Vs.
Union of India & Ors

Original Application No. 15/2014 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: River Pollution, Loss of Livelihood, Sewage Treatment
Decision: Disposed
Date: 21 September 2016

JUDGMENT

This application was filed seeking relief against the alleged pollution of the river Churni passing through Nadia district of West Bengal which was resulting in a huge fish kill and making the water unworthy of bathing and irrigation. The applicant contended that this affected the lives of nearly 6 lakh inhabitants and thousands of fishermen, as the river passes through parts of a densely populated area, thereby causing huge loss to their livelihood. It was further submitted that a factory (manufacturing sugar, wine, chemicals etc.) located in Bangladesh released most of its wastewater into another river named Mathabangha which ultimately finds its way into the river Churni leading to significant water pollution for 10-15 days, at least 4 to 5 times a year.

The Respondents admitted the aforementioned facts but expressed their inability to resolve their issue, suggesting that the matter be taken up with the Govt. of Bangladesh, considering that the State Government had not taken strict action in the present case, forcing the applicants to file a Contempt Application against the CPCB and prayed that the Respondents be directed to initiate dialogue with the Bangladesh Govt, check pollutants of its industries, take appropriate steps to reduce the same, set up a garbage treatment plant at the bank of the river etc. The Government responded by stating that many talks had already been initiated with the Government of Bangladesh without any redressal.

The Tribunal directed the local Municipality to prepare schemes for sewage treatment and solid waste management and directed the State Government to intervene in administrative and financial matters, taking responsibility to make the environment pollution free, in accordance with Article 48A of the Constitution of India. It also directed the SPCB to indulge in specific activities to ensure that no water is discharged without treatment. The Tribunal even considered ascertaining the feasibility of construction of a sewer drain parallel to the river to divert the wastewater and held joint meetings with

members nominated from each party. Detailed discussion led to the Tribunal directing strict compliance with certain measures to prevent pollution of the river. These measures included: a detailed project report to be prepared within 3 months by the MED post field survey conducted by experts, allocation of funds by the State Govt. for implementation of the sewage treatment project within the current financial year, ensuring door-to-door collection of Municipal wastes along with its transportation to a dumping site away from the river and disposal of Bio-Medical waste according to its management rules, wastewater to meet disposal standard before being discharged, continuance of negotiation with the Govt. of Bangladesh to set up a treatment plant for the industries contributing to the said pollution and submission of a compliance report by April 2014.

The application was disposed of with the said directions.

Chhattisgarh Nagrik Sangarsh Samiti
Vs.
Principal Secretary, Nagariya Parishashan and Vikas Vibhag & Ors.
Original Application No. 78/2016 (CZ)

Coram: Hon'ble Justice Mr. Dalip Singh, Hon'ble Dr. S.S. Garbyal
Keywords: Noise Pollution, Air Pollution, Loudspeakers, Traffic congestion
Decision: Disposed
Date: 27 September 2016

JUDGMENT

This application was filed before the Tribunal for imposing ban on the use of DJs and loudspeakers along with processions, including rallies and also to stop erection of *pandals* and welcome gates on public properties and roads which leads to congestion of traffic causing high levels of air and noise pollution. The applicant prayed for direction to the Respondents to measure the noise levels during public and private events as well as to take prompt action in the event of a complaint being filed and further to undertake continuous monitoring of air pollution particularly with respect to PM 2.5 and PM10 not only on highways but also marriage halls/grounds.

Pointing out the study of CECB which indicated higher noise levels between the period of 2013 to 2016 at various locations of Raipur, the Tribunal raised concern over the increasing vehicular traffic and asked the authorities to consider ways to smoothen flow of traffic in order to avoid excessive use of horns which adds to the noise levels. While reiterating the directions passed in IN RE: Noise Pollution vs Unknown, 2005 SCC 3136 and Supreme Court Group Housing Society & Anr Vs. All India Panchayat Parishad (Principal Bench NGT dated 18.12.2012), the Tribunal directed the police and district administration to take prompt action against the complaints filed during festivals and religious functions. While refusing grant of permission for erection of *pandals* and welcome gates on the road, it directed for immediate action for removal of illegal erections and to penalize the persons responsible. The Tribunal while reiterating the directions passed in N. Vaidraj Vs Union of India called for increased awareness programmes via print and electronic media to make people aware of the harmful impact of air pollution caused by firecrackers as well as strict impoundment of the same where the compositions and decibel levels are unknown and the import of which has not been sanctioned. Similarly use of DJ's and DG sets were subjected to monitoring by the CECB.

The Tribunal also emphasized for the need of effective monitoring mechanism and therefore directed the State to install sufficient number of monitoring stations in urban areas with specialized equipments for monitoring air and noise pollution levels and making the data available to the CECB for taking effective steps in this behalf.

Consequently, the application was disposed of.

Mr. Tanaji Balasaheb Gambhire
Vs.
Union of India & Ors.

Application No. 184/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, Construction, Polluters pays principle
Decision: Partly Allowed
Date: 27th September 2016

JUDGMENT

This application was filed seeking directions against Respondent No. 9 (Project Proponent 'PP') with regards to construction of a residential and commercial complex in village Vadgaon Budruk, Pune. The applicant submitted that the EC was granted to the PP on 04/04/2008 thereafter which the PP commenced the construction activity. The applicant contended that after the project had sufficiently progressed, the Member Secretary of Maharashtra Pollution Control Board ("MPCB") inspected the construction activity on 31/08/2015. The minutes of MPCB meeting reflected that the Regional Officer of the MPCB had reported non-compliance of the terms on which the EC was granted to the PP. Further, the minutes reflected that the EC was granted for construction of 12 buildings but the PP had constructed 15 buildings and also increased the number of shops and flats. The minutes of the meeting also showed the representative of the PP had accepted the non-compliance to the conditions of EC. The applicant also submitted that the MPCB noticed deliberate violation of the conditions of EC by the PP and issued directions on 30/09/2015 to stop further construction activity and also directed disconnection of electricity. Besides these contentions, the applicant also contended that there was failure to perform statutory functions on the part of authorities including Pune Municipal Corporation (PMC), SEIAA, SEAC and Department of Environment, State of Maharashtra (DoE). The applicant submitted that PMC was aware of violations by the PP but still granted the completion certificate. The applicant also alleged that there was complete inaction on the part of SEAC and SEIAA and submitted that the sub-committee of SEAC inspected the project site but failed to record that the PP had increased the project activity in terms of buildings, BUA etc. With regards to SEIAA, the applicant

submitted that the directions were proposed under provisions of Section 5 of the Environment (Protection) Act by DoE in August 2015 and thereafter no follow up action was taken in terms of these directions. Accordingly, the applicant sought directions that the respondents demolish all the illegal structures at the site in question, the SEIAA and SPCB initiate action against the PP for violation of the provisions of the EIA Notification, Respondent no. 2 to take action against the SEIAA for granting EC in violation of the provisions of the EIA Notification, PP to pay compensations for the damage to public health, property and environment and MPCB and SEIAA to disclose all projects which had been granted post facto clearance.

In response to the application, the PP submitted that the project was legally permissible and during construction they had ensured there was no violation of any statutory regulations. The bone of contention of the PP was that the project was well within sanctioned FSI/BUA of 57, 658.42 sq.mtrs and therefore the present application must fail. The PP also referred to the order passed by Secretary of DoE on 31/05/2016 by which the project was certified to be within the permissible limits and contended that the Tribunal itself directed the SEIAA to consider the request of the PP for modification of the EC via a previous order dated 23/02/2016 thereafter which the impugned case was referred to DoE. This impugned order by DoE on 31/05/2016 was seriously contested by the applicant.

Upon perusal of the evidence on record, the Tribunal delved into two main issues. First the Tribunal discussed the legality of the order by DoE on 31/05/2016. Second, whether the construction activity of the PP was within the sanctioned limit and could the PP proceed with construction without obtaining modified EC.

Dealing with the first issue, the Tribunal noted that the present application was heard on merit on 23/05/2016 thereafter which it was reserved for judgment. The Tribunal also noted that the order by the DoE dated 31/05/2016 was passed during the period in which the case was pending for final decision which raised questionable circumstances as it was evident that DoE had knowledge about the stage of the case. Further, the Tribunal noted that the impugned order of DoE had referred to FSI and BUA as synonym of one aspect. To check the veracity of this claim, the Tribunal called upon PMC to file a statement stating the difference between BUA and FSI. The Tribunal noted that neither the PMC nor the DoE had seriously examined what was FSI and BUA. Further, the Tribunal referred to the EC that was granted in April 2008 and noted that the project was appraised as per BUA and there was no reference of FSI. In order to clarify these terms, the Tribunal referred the Development Control Rules of the PMC, Pune, 1982 and opined that the terms were distinct and had different interpretations altogether. The Tribunal also noted that Principal Secretary of DoE had relied on the report filed by junior most official of PMC without conducting any independent inquiry. Accordingly, the Tribunal noted that the impugned order by the DoE was illegal and the contentions by the PP and PMC in this regard were therefore rejected in totality.

Coming to the second issue, the Tribunal after establishing the difference between BUA and FSI noted that the PP had prima facie exceeded the permissible limit for construction as per the EC granted and held that no modified EC was granted to the PP for the area beyond the limit circumscribed by EC. For the said reasons, the Tribunal answered this issue in negative and held that the construction activity of the PP beyond the permissible limits could not be saved and was stopped, subject to the grant of modified EC by competent authority. Another issue dealt by the Tribunal was the consequence of such violation. The Tribunal noted that the applicant sought for demolition of illegal structures but the Tribunal opined that the PP had already created third party rights and any order to demolish the illegal structures would adversely affect their rights.

The Tribunal applying the polluter pays principle directed the Project Proponent to pay environmental compensation of Rs.100 crore or 5 per cent of the total cost of project whichever was less and Rs. 5 crores for contravening several environmental laws. The Tribunal opined that there was deliberate or otherwise suppression of facts by the officer of PMC and thus imposed a fine of Rs. 5 lakhs on PMC and also directed Commissioner of PMC to take appropriate action against the defaulting officers. Similarly, the Tribunal directed the Chief Secretary, State of Maharashtra and competent authority to take notice of the officers who had misled the DoE in the matter relating to interpretation of FSI and BUA. Finally, the Tribunal directed PMC, DoE and SEIAA to pay cost of Rs. 1 lakh each to the applicant.

Accordingly, the application was allowed with order as to costs.

A. Selvam

v.

The Member Secretary, Tamil Nadu Pollution Control Board & Ors

Application No. 112/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarrying, Amendment to Environment Clearance
Decision: Dismissed
Date:1 October, 2016

JUDGMENT

In this application, the prayer related to the quarrying of sand in river Palar by the 6th respondent (Executive Engineer, PWD) without obtaining Environmental Clearance. According to the applicant, the EC granted to the respondent had expired and subsequently, had not been extended.

On facts, it was made clear that the State Environment Impact Assessment Authority ('SEIAA') in the order dated 16.6.2016 had amended the EC to the extent that if the mining activity was not completed within the stipulated lease period and if the lease period was extended further, the EC was co-terminus with the lease period granted in favour of the respondent. Herein, the lease period had been extended and as on date, not only the EC but also the consent as well as the lease for the purpose of quarrying stood valid.

In view of the above, no further orders were required in the application and accordingly, the application was dismissed.

K. Sudhan
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 74/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Sulphur, Transportation
Decision: Dismissed
Date:1 October, 2016

JUDGMENT

In this application, the prayer was for a direction against the respondents No. 1-10 to take action against Super Phosphate Factory ('12th respondent') owned by the Kothari Industrial Corporation Limited ('11th respondent') unit from transporting sulphur in improperly sealed trucks from various procuring points.

As a reply to the applicant's representation, the District Collector ('6th respondent') filed an affidavit wherein he stated that after inspection of the Unit of the respondent, it was observed that the unit had stopped its production of Sulphuric Acid and Sodium Flouride since 2002 and had dismantled and removed the plants and machineries pertaining to the same, thereby vacating the site. It was also observed that the unit was carrying out the production of single super phosphate only using the rock phosphate and Sulphuric acid as raw materials.

In view of the stand taken by the 6th respondent, no further order was required and as a result, the application was closed.

Leena Andrews
v.
The District Environmental Engineer & Ors
Application No. 210/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Noise Pollution, Construction
Decision: Allowed
Date: 3 October, 2016

JUDGMENT

In this application, the applicant prayed for a direction against the official respondent 1-4 to take appropriate action on a representation dated 8.2.2016, related to noise pollution stated to have been caused by the 5th respondent project proponent during the time of construction.

The Tamil Nadu Pollution Control Board ('Board') contended that the project proponent had obtained Environment Clearance ('EC') for the construction of a multi storied residential block, which came to his notice when the project proponent had approached him for consent. However, taking note of the main allegation made by the applicant, the Tribunal was of the considered view that the project proponent should not be permitted to carry on building construction activities during night hours i.e. from 10 P.M. to 6 A.M., apart from activities involving loading and unloading of construction materials. The project proponent was also directed to provide appropriate acoustic measures for the purpose of avoiding noise pollution to the residents in the area during the day time.

With the above direction, the application was disposed of.

Binu Majaloor
v.
State of Kerala & Ors
Application No. 454/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Sand Mining
Decision: Dismissed
Date:3 October, 2016

JUDGMENT

In this application, the applicant prayed for a direction against the Pathanapuram Grama Panchayat ('6th respondent') to not permit the respondents 9-12 from removing sand from the beds and banks of Kallada River in the Manjaloor Ward of Pathanapuram Gram Panchayat.

The District Collector had filed a status report on 7.9.2016, which stated that two Kadavus had been authorised in the Pathanapuram Taluk of Kollam District. As per the direction of the Kerala High Court dated 31.3.2011, the Land Revenue Commissioner had directed the District Collector of the Kollam area to stop the sand mining activities in one of the Kadavu till sand auditing was done. Accordingly, the District Collector had banned the sand mining of that Kadavu at Manjaloor Ward and after the Sand Audit report was presented, the State Government directed the District Collector not to accord sanction for sand mining in Kallada river for three years with effect from 6.6.2015.

In view of the fact that the applicant had questioned about the sand mining in Kallada river wherein mining had been stopped, nothing survived in the application as in such circumstances, the prayer of the applicant had been met with by the Government.

Accordingly, the application stood disposed of.

V. Arjunan
Vs.
The Secretary to Government, P.W.D. Department & Ors.
Application No. 202/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Construction, Lake, Irrigation Channel
Decision: Allowed
Date: 4th October 2016

JUDGMENT

The relief prayed for in this application was for a direction against the respondents to construct the broken bund of a lake and irrigation channel by cement concrete walls and the necessary sluice and to remove the excess mud and sand deposited in the cultivation lands.

In their reply, the respondents accepted the request of the applicant as per the representation made to the Collector, Kancheepuram and relief claimed in the application, requesting prescription of a time limit for the same. In view of the same, the PWD was directed to take steps to expeditiously complete the work.

With the above direction, the application was disposed of.

Vadamugam Kangayempalayam Environment Protection Association
v.
Ministry of Environment and Forest & Ors.
Appeal No. 32/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Environment Clearance, Thermal Power Plant, SEZ
Decision: Dismissed
Date: 4 October, 2016

JUDGMENT

This appeal was filed challenging the EC dated 23.12.2014 granted by SEIAA for 48 MW imported coal based Thermal Power Plant in Tiruppur District to be set up by the 4th respondent, (M/s IG3 Infra Ltd), the Project Proponent. The project was challenged on various grounds, that SEIAA failed to consider the cumulative impact of the project, that the EIA report was inadequate, public hearing was improper and without wide publicity which prevented participation of affected people, baseline data collected was prior to the issuance of TOR, EIA report was silent on the impact of bottom ash and nothing was stated about the ash pond or the effect of Ozone gases, radioactivity or the assessment of the flora and fauna. Mainly, the EAC failed to see that the EIA report was for a cogeneration plant of mixed fuel (Coal and Biomass) whereas clearance was granted exclusively for coal based Thermal Power Plant, EIA did not study the impact of the project within 10 km radius. The appellant further alleged that the SEIAA failed to consider that thermal power plant was not a standalone project but an integrated project including a textile park. Thus, the appellant pleaded for setting aside the said EC on the grounds that the appraisal made by SEIAA was faulted and without any application of mind which rendered the EC invalid. The appellant had earlier filed an application (Application No. 149 of 2013) for restraining the Respondent No. 4 from carrying out any construction activity without obtaining the necessary permission. The said application was closed on an undertaking by the said respondent that no such activity would be carried out till legal permissions were obtained.

In response to the application, SEIAA submitted that the TOR's for the project were issued by the EAC since during that time the authority was not functioning in the State but subsequently the same was appraised by SEAC and recommended for grant of clearance. The SEAC further submitted that it had sought clarification from the project proponent

regarding EC for SEZ textile park and came to know that a CTE had been granted by the State Pollution Control Board imposing conditions for textile park including activities such as garment manufacturing etc. However, the committee then recommended to the authority that the EC should be issued with condition to amend the CTE so as to permit the thermal power project on the designated SEZ textile park. The Board submitted that the project proponent had established a textile park SEZ which was approved by the Ministry of Textile for which CTE was provided. However, it was due to the power crisis that the 4th respondent proposed to set up a thermal power plant for its internal use at the same textile park which was duly appraised and granted clearance by the SEIAA. Subsequently, CTE for the power plant was granted by the Board on 17.07.2015. The project proponent opposed the appeal on grounds of limitation as the same was filed beyond the period prescribed under the NGT Act. The respondent alleged that the EC was granted after following due process of law. The respondent further submitted that the project was a standalone project and not an integral part of the SEZ for textile park. The respondent submitted that the project was for a small capacity which had an insignificant impact of ozone gases and merely because the data was collected prior to the TOR, should not be a ground to set aside the EC.

The main issue to be decided by the Tribunal was whether the impugned EC granted by SEIAA was in accordance with law or not. The Project Proponent had initially raised an issue of limitation, which was subsequently given up.

With regard to the contention of data collection before the ToR, the Tribunal observed that as per the amendments made in the EIA (dated 04.04.2011 and 10.04.2015) standardized form of ToR could be used for making EIA study. It further noted that the data collection was undertaken even after issuance of ToR based upon which the EIA was prepared. Though the Tribunal found that the appropriate practice would be that the EIA study was done after the issuance of ToR however, it held that the collection of data before ToR could not be a ground to nullify the EC especially when the appellant had not alleged that the baseline data did not identify environmental concerns. Citing the judgment in May George v. Special Tahsildar & Ors in which the Apex Court had considered the situation where a provision was to be treated either mandatory or directory, depending upon the context in which the provision was used, the Tribunal in light of the same, held that collection of data post ToR can only be directory even though the EAC should not carry on such appraisal before the final EIA report.

Considering the submission that the EAC had failed to give reasons for accepting the appraisal as while undertaking appraisal, the EAC several times deferred the project proposal which is not permissible under the EIA Notification, 2006 the Tribunal while analyzing the procedure of appraisal noted that the proceedings of the EAC and SEAC must be transparent and the committees' had definite right to call for clarifications from the project proponent. Thus, the contention of the appellant that the SEAC should have outrightly rejected the proposal instead of deferring the same was found to be unsustainable. It further rejected the argument of the Tribunal that the SEAC/EAC was

required to assign reasons for recommending the project proposal to the regulatory authority. The Tribunal noted that as per the provisions of the EIA regulations, the committee is required to give reasons only for rejecting the application of EC and not otherwise.

With regard to the contention that the EC was given for a coal based TPP as opposed to a coal and biomass based plant for which EIA study was undertaken, the Tribunal noted that the PP had converted the proposal for utilizing imported coal and after considering the same, appraisal was done and EC was granted exclusively for using imported coal. The EC made it clear in the conditions that only 100% coal should be used as fuel and not other fuel, including domestic coal. Therefore, the objection raised by the appellant was not thought to be of grave importance as what was important was the maintenance of the emission standards and since both biomass and coal are carbon based, the deviation could not be said to change the concept of the project itself. The Tribunal also noted that the environmental impact on air quality has been adequately addressed in the EIA. In respect of the contention regarding impact on the reserved forests within a radius of 6 kms of the project, the Tribunal held that the apprehension of the appellant was merely speculative and since there were no red category industries in the close vicinity, the question of cumulative impact assessment did not arise. The Tribunal further stated that as the project was imported coal based the same did not contain radioactive material and even otherwise the aspect of radioactivity was covered under the Atomic Energy Act, 1962 which was not within the domain of the NGT Act, 2010. With respect to the issue of fly ash management, the Tribunal found that the same could be taken care by the project proponent by implementing the MoEFCC notification for 100% utilization of fly ash. The Tribunal further noted that though the project was within the notified textile SEZ, yet the EC proposal was made separately for setting up of the thermal power project and was not found to be integrated with SEZ textile park as alleged by the appellant.

The tribunal did not find any reason to interfere with the EC granted by the SEIAA and accordingly dismissed the appeal.

Lingaraju
v.
The State of Karnataka & Ors
Application No. 223/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: Extension of TOR
Decision: Dismissed
Date:4 October, 2016

JUDGMENT

This application was filed for an extension of time of the Terms of Reference ('ToR') , which had expired in September 2016 based on the argument that a public hearing had not been conducted for the same. However, the Tribunal found no provision in the Environment Impact Assessment ('EIA') Notification, 2006 providing for extension of the ToR granted and even though the period had been extended up to 5 months, on an earlier date, it was made clear that no further extension would be granted.

Accordingly, the application was disposed of with liberty to the applicant to approach the appropriate authority for extension of the ToR, in accordance with law.

K. Mahalakshmi
v.
Vijaya Prasad & Ors.
Application No. 84/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Plastic Manufacturing, Consent, Noise Pollution
Decision: Disposed
Date: 5 October, 2016

JUDGMENT

This application was based on a representation made to the Tamil Nadu Pollution Control Board and Electricity Board (Respondents 2-4) complaining about the activities of the first respondent in manufacturing plastic without obtaining consent from the Pollution Control Board and causing noise pollution.

The respondent unit stated that he had been carrying on the activity by way of a permissible motor since many years whilst the Board stated that first respondent had been carrying on commercial activity in a residential Area without obtaining ''Consent to Operate'' and that the pollution norms had exceeded the permissible limits. The application made to the Board for granting ''consent'' was pending, pursuant to which the Board had issued a show-cause notice. An opportunity of personal hearing had also been given to the first respondent where appropriate orders would be passed.

Therefore, the Tribunal directed that in the personal hearing that was to be held in front of the Board, any violations found would permit the Board to issue directions to the respondent to shift its place of business or reduce the electrical power of the motor to reduce the noise level. It would be open to the parties who are affected to work out their remedy in the manner known to law.

With the above direction, the application was disposed of

Meenava Thanthai K.R. Selvaraj Kumar
Vs.
The State of Tamil Nadu & Ors
Application No. 150/2016 & M.A. No. 134/2016 and 135/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Water Pollution, Untreated Effluents
Decision: Dismissed
Date: 6 October, 2016

JUDGMENT

M.A. No. 134 of 2016 was filed under section 26 of the NGT Act, 2010 to punish the Respondent No. 10 for disobedience and violation of the interim order dated 13.07.2016 made in Application No.150 of 2016, passed in respect of discharge of untreated effluents. The Tribunal noted that the applicant's main grievance was with respect to putting up of construction and it was stated that 5 tanks had been constructed after the order, however, the Tribunal's order was only in respect of the discharge of the effluents. Thus, finding no substance in the said miscellaneous application, the same was dismissed.

M.A. No. 135 of 2016 was filed to take action against Respondent No. 10 for disobedience of the order dated 17.08.2016 in which the Tribunal had prohibited the respondent from carrying out any construction activity except maintaining infrastructure. It was submitted that when an inspection was conducted on 05.10.2016, the State Pollution Control Board observed that no activities were going on at the site. The 10th respondent also filed an affidavit stating that no fresh tank was being put up. The tribunal was of the view that there was no substance in the application and accordingly, dismissed the same.

In Application No.150 of 2016, the relief claimed was for direction to the Respondents No.1-8 to initiate action against the respondent company (Respondent No. 9) for disposing untreated effluents into the sea thereby causing pollution. The 9th respondent contended that he intended to put up a pipeline only for the purpose of importing edible oil from other countries and that no untreated effluents would be discharged considering that there was no manufacturing activity of edible oil. In view of the same, the application was disposed off with directions to the Pollution Control Board to continue to monitor that the respondent did not discharge effluents into the sea or carry out any manufacturing activities. The applicant however, brought to the notice of the Tribunal that the respondent company (Respondent No. 9 and 10) were constructing pipeline

without obtaining any consent from the Board to which the Tribunal directed the applicant to work out his remedy by filing a separate application.

T. Shanmugam
Vs.
Union of India & Ors.
Appeal No. 10/2014 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: EC, Quarrying
Decision: Dismissed
Date: 7th October 2016

JUDGMENT

This application was directed against the EC granted by the State Level Environmental Impact Assessment Authority, Tamil Nadu to the Executive Engineer, PWD to quarry sand in the River Kollidam over an extent of 18 hectares in Natham Village, Trichy District. In an affidavit presented to the Tribunal, filed by the Assistant Executive Engineer of the PWD, it was stated by the PWD that there were no quarrying operations in respect of the 18 places for which EC had been granted, out of which Natham was at item no. 10.

In view of the statement made by the PWD, nothing survived in this application and accordingly, it was closed.

Shri Hazi Arif

v.

State of Uttar Pradesh & Ors

Original Application No. 16 of 2014

[M.A. No 102/2014, MA. Nos. 451, 741, 1353, 1354, 1355 and 1356 of 2015 and M.A. No. 208 of 2016] (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Water Pollution, Green belt, Recurring Cause of Action, Burden of Proof, EIA
Decision: Allowed
Date: 7 October 2016

JUDGMENT

The application was filed against the covering and construction undertaken on Sahibabad Drain No. 1 in Loni District of Ghaziabad, and encroachments on green belt in and around Vaishali Metro Station/Karkar Model Village which according to the applicant led to environmental degradation, stagnation and pollution of water, loss of tree cover and release of untreated sewage. The applicant stated that he took efforts to communicate the same to various authorities but no heed was paid to the same. In the present case the questions for the tribunal's consideration were first, whether the tribunal had the jurisdiction to entertain the application, second, whether the application was barred by limitation, third, whether the construction in question violated the provisions of the Water Act, 1974, and finally, whether the construction on the green belt area lead to environment degradation.

A committee of experts had been constituted to inspect the area, which found the overall maintenance of the 'manmade storm water' drain to be extremely poor due to deposits of garbage, silt, and growth of undesirable vegetation generating foul gases and affecting the living of the population of the area. It was also observed that a large number of establishments had covered the drain either for commercial constructions, with or without the permission of the Nagar Nigam, Ghaziabad, which was failing to monitor the compliance of the agreement conditions, such as the obligation to maintain the green belt over the covered portion. These units were also found to be discharging waste recklessly,

and to have constructed permanent commercial units in the green belt area of Vaishali Zone 5 in violation of Forest (Conservation) Act, 1980. These observations were challenged by the respondent for lacking scientific method.

The applicant approached the tribunal on grounds of violation of Section 24 read with Sections 33, 47, and 48 of the Water Act, 1974, while the respondent contended that the issue did not fall within the purview of Section 24 but the U.P. Municipal Corporation Act, as the drain is a manmade drain and therefore does not fall under the definition of the term 'stream' in Section 2(j) of the Water Act. The tribunal rejected this argument of the respondent on the ground that Section 24(1) (a), (b) obligates every individual not to knowingly cause/permit entry of polluting/noxious matter to enter into any stream/sewer, which may impede the flow/lead to pollution, and storm water drains whether flowing or dry, natural or artificial could be regarded as stream within the meaning of Section 2(j) of the Water Act, 1974. Therefore, with respect to the first issue, the tribunal found itself to have jurisdiction under Section 14 of the NGT Act as the encroachment of green areas adversely impact the ecology, and the issue was one of larger interests concerning a substantial question of environment.

With respect to the second question, it was the case of the applicant that the petition was not barred by time by virtue of the existence of a recurring cause of action. Recurring, has been defined to mean something that occurs again and again, and could have new elements in addition to/substitution of when the cause of action first arose, and such reoccurrence is complete and composite, hardly having nexus to the first breach, and therefore not inviting consequences of the expression 'cause of action first arose'. The argument of the applicant was accepted, and the tribunal agreed to admit the application under Section 15 of the NGT Act.

With regard to the third issue, the tribunal held that covering of the drain piecemeal would create two distinct environments, one with air and one without, which would not be conducive to healthy environment as defined under Section 2(a) of the Environment (Protection) Act, 1986 and therefore an Environment Impact Study should have been conducted before allowing the constructions. It was also held that concretization of a storm water drain would frustrate the purpose for which it was constructed. On the other hand, the respondent argued that the Nagar Nigam had permitted the construction, and therefore the construction was legal under Section 24(2) of the Water Act. The tribunal then undertook an examination of what permissions would shield parties from liability under Section 24(1), and concluded that failure to discharge obligations under Section 24(1) gave rise to either criminal liability under Section 43 of the Water Act, or civil liability, of which civil liability could not be escaped by virtue of the permissions obtained. The tribunal also rejected the argument of the respondent that the applicant had to show how the construction aggravated pollution/obstructed the flow of water, on the ground that the tribunal is not bound by ordinary rules of evidence under the Evidence Act, 1872 but has to ensure only the Principle of Natural Justice under Section 19 of the NGT Act, 2010.

The tribunal held that Section 20 of the NGT Act compelled the application of the principle of sustainable development and the precautionary principle, and therefore the onus was on the person carrying out the construction to show that it was being conducted in accordance with prescribed norms/was not violative of Section 24(1)(b) of the Water Act. It was therefore held that the construction violated the provisions of Section 24(1)(b) of the Water on the basis of photographs and reports received, as it would be reasonable to assume that something that impedes the flow of water would lead to aggravation of pollution. Therefore, the tribunal disposed of the application by directing that no construction would be allowed on the drain unless the EIA study had been conducted, that construction be removed, and that the expert committee constituted conduct a study of the drain to make recommendations in the interest of the environment. The Nagar Nigam Ghaziabad was also directed to pay a cost of Rs. 3 lakhs to the applicant, and directed to take all lawful measures to prevent the dumping of waste in the said drain.

G. Ramesh
v.
The District Collector & Ors.
Application No. 64/2015

And

G. Venkatesan Magaral
v.
The District Collector & Ors
Application No. 121/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Justice P.S. Rao
Keywords: Quarrying, License, Soil Removal, Irrigation Tanks
Decision: Dismissed
Date: 17 October 2016

JUDGEMENT

This application was filed with a prayer to restrain the official respondents No. 1-4 from sanctioning, granting and quarrying licenses to the 5th respondent or any other party, who was claiming sand quarrying license in Periya Eri, which is in contravention of G.O.Ms. No. 938. According to the applicant, as per the GOM's issued by the PWD the Government had issued certain directions for removal of soil from irrigation tanks subject to certain conditions.

Applicants claimed that these conditions were not followed as a result of which indiscriminate quarrying had been going on. However, when the District Collector filed his reply, it was revealed that the applicants had encroached upon the water body and had raised paddy crops and therefore, their applications could not be encouraged.

It was made clear that anyone wanting to obtain permission for the purpose of removal of silt has to apply to the District Collector who is the sole permission giver and priority was to be given to people who were residents of the local village, after which third parties could be considered. In view of the same, the application was found to be not maintainable. However, the Tribunal clarified that the Collector must take steps to remove all encroachments and pass appropriate orders for the purpose of removal of such activities.

With the above direction, the application was dismissed with no costs.

Raveendran
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 164/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Hot Mix Plant, Air Pollution, Silent Zone
Decision: Allowed
Date: 17 October, 2016

JUDGMENT

This application was filed for a direction against the Tamil Nadu Pollution Control Board to close a Hot Mix Plant in Idaikode Village in the Kanyakumari District by revoking its consent, if any, as the plant activity caused environmental concern to the people living in the surrounding area. According to the applicant, the entire area was wetland which was illegally converted for establishing Hot Mix plant.

In a reply filed by the Pollution Control Board, it was stated that the 5th respondent had applied for consent to establish the hot mix plant under the Water and Air Acts. Further, it also stated that based on the complaints received by the public with regard to the air pollution caused due to the illegal operation of the plant, the Board inspected the unit and found that it had been erected without permission and was situated in a silence zone with hospitals, educational institutes and religious places situated within 100 meters of it. For this reason, the Board rejected the application filed for consent to establish. However, the 5th respondent, on filing an appeal before the Appellate Authority, was granted consent under the Water and Air acts, as per the directions of the Authority which was valid till 31.03.2013.

Subsequently, another applicant filed a writ petition in the Madras High Court, challenging the order of the Appellate Authority, which was transferred to the Tribunal and was dismissed eventually for non-prosecution. Therefore, it was clear that the unit was operating without consent and the Unit was issued a show cause notice and was eventually found to have stopped its operations, following the same. This was due to an order of injunction granted against the unit from running and the District Collector was asked to seal the premises, following an order of the Madras High Court in a subsequent petition.

The Tribunal noted that the Board had directed closure of the unit since it caused excessive noise pollution and violated siting guidelines. It was confirmed by way of inspection that the unit had stopped its activities. In view of the facts, the Tribunal allowed the application with a direction to the Board to ensure that the unit did not carry out its operations without obtaining consent from the Board and to seal the unit till such consent was granted. Accordingly, the application was disposed of.

Puducherry Environment Protection Association
v.
Union of India & Ors
Application No. 103/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: EC, SEIAA, Pharmaceutical products, Expansion project, Consent, Limitation
Decision: Dismissed
Date: 18 October, 2016

JUDGMENT

This application was filed challenging the EC dated 24.06.2014 granted by the SEIAA in favour of the project proponent (5th Respondent) for the proposed expansion of a Pharmaceutical Multi-Product Facility with change in production capacity as well as amendment order approving amendment of plot numbers/survey numbers. It further sought direction to the Tamil Nadu Pollution Control Board to close the unit for violation of the EIA Notification 2006 and various environmental regulations by illegally expanding production and direct the first respondent – MoEF & CC to initiate prosecution against the project proponent under Section 15 of the EP Act, apart from directing to pay compensation for the environmental harm caused by the illegal activities.

The applicants contended that the 5th respondent had initially obtained EC from the MoEFCC in the year 2000 for expansion of Bulk Drug Unit, however this permission was for the expansion of only 13 products but the respondent applied for Consent from the Board to produce a larger number of products in violation of the EC conditions and the EIA Notification of 1994. It was the case of the applicant that the EC granted by the first respondent dated 24.10.2000 was only for 13 products, however, the fifth respondent had been increasing the production capacity by obtaining consents for 18 products and thereafter for 25 products in violation of the Notification. According to the applicant, the Consent could be granted only in respect of the products for which the EC was granted and raised doubts as to how the Board was entitled to grant Consent for proposal of new building and modification of existing building without obtaining EC for such expansion activities.

The applicants had submitted that the impugned EC had been granted by the second respondent – SEIAA for manufacturing of 53 products in violation of the original EC

granted by the MoEFCC. The grant of EC had further been challenged for the reasons of jurisdiction as the project was located in SIPCOT Cuddalore, a critically polluted area which as per the general condition laid down in the EIA Notification, 2006, could only have been appraised as Category A project by the MoEFCC. The applicant submitted that the project proponent in their EC application (Form –I) had deliberately concealed the fact that the location of the unit was in CPA which amounts to 'fraud'. The applicant association also relied upon a data report and statistical information which showed huge investments on infrastructure and illegal expansion of the unit without obtaining prior EC. On these grounds, the applicant pleaded for holding the EC null and void.

The fifth respondent – project proponent in its reply objected the application on grounds of maintainability. According to the said respondent, the impugned order of EC was appealable under Section 16(h) of the NGT Act, 2010 whereas the present application was filed under Section 14 of the NGT Act which was contrary to law. Further, the application was also barred under section 14 (3) of the NGT Act, 2010 since the application was filed in the year 2016 when the impugned EC was granted and made available in public domain in the year 2014. The respondent also made objections with respect to the locus standi of the applicant association. While dealing with the merits of the case, it was stated by the fifth respondent that the said industry was functioning from 1991 and complying with all environmental requirements with adequate safeguards and it was a ZLD unit, causing no pollution whatsoever. The industry was functioning with prior approval from the Government of India, including EC and Consent from the Board. It was also stated that unit was engaged in the manufacture of bulk drugs for Pharma Company and was also actively involved in Research and Development for the larger interest of the society. The respondent further pushed the blame on the SEIAA stating that learning the project was in Cuddalore, the authority itself should not have entertained the EC application and transferred it to the EAC/MoEFCC.

The following questions arose for consideration of the Tribunal: (1) Whether the EC (dated 24.06.2014 followed with amendment dated 24.11.2015) issued by the SEIAA were to be declared null and void on the point of jurisdiction and on fraud stated to have been committed by the project proponent? (2) Whether the application was maintainable on the ground of limitation?

The Tribunal observed that Cuddalore was declared as Critically polluted area by the Central Pollution Control Board on the basis of CEPI score (Comprehensive Environmental Pollution Index), in the year 2009-2010 (The industrial clusters having CEPI score 70 and above have been identified as Critically Polluted Areas). Considering the aggravated pollution in Cuddalore, a temporary moratorium was issued in the year 2010 restricting grant of EC for development projects in the area. However, the said moratorium was lifted on 15.02.2011. It was observed that the moratorium was only issued for the time being so that the areas identified as CPA could be closely monitored by the State Pollution Control Boards and once it is observed that the parameters for controlling pollution are in place and within the permissible levels, the same could be

lifted by the Government after imposing stringent safeguard measures. The Tribunal though found that as per the official memorandum dated 26.04.2011 of the MoEFCC, the projects which were located in the industrial clusters in which the moratorium was lifted were required to be treated as Category A projects, however, it also found that in the reassessment of CEPI index in 2013, the CEPI score of Cuddalore was assessed as less than 70 which means that the same did not continue to be CPA and therefore the general conditions could not have been applied to it. In the present case, the EC dated 24.06.2014 was granted during the period when moratorium was lifted in respect of Cuddalore and the CEPI score reassessed in the year 2013 was less than 70, thus, there was no bar on the part of the SEIAA to have considered the EC application of the project proponent. It further stated that there was no 'fraud' committed by the project proponent by suppressing/concealing the location of the project in the CPA since during the relevant point of time neither Cuddalore was under moratorium nor it exceeded the CEPI score for CPA.

With regard to the question of limitation, the NGT Act contemplates filing of an application in respect of resolving civil disputes relating to the environment within a period of 6 months from the date when the cause of action for the dispute first arose, with a delay of 60 days which could be condoned by the Tribunal. The Tribunal observed that the EC was made available on the SEIAA website on 10.10.2014, thus the limitation triggered from the date when the EC was made available in public domain. Herein the application was filed in 2016 challenging the EC granted and publicized in 2014 and amended in 2015. Therefore, the Tribunal was of the view that the application had not been filed within the period of limitation as prescribed under section 14 (3) or section 16 of the NGT Act, 2010. Thus, the application was dismissed on the grounds of maintainability.

S. Soban Babu
v.
Government of India & Ors.
Application No. 199/2015 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Mining Lease, EC, Public hearing
Decision: Dismissed
Date: 20 October, 2016

JUDGMENT

The application was filed for directions to the Andhra Pradesh Pollution Control Board (APPCB) to conduct public hearing in respect of the mining lease granted to the applicant and for further direction to the respondents, the MoEFCC to consider the EC application without insisting on public hearing and to complete the appraisal process to grant EC within a reasonable time, as fixed by the Tribunal.

The case of the applicant was that he was granted lease for laterite mining in the East Godavari District. The applicant applied for the EC before the MoEFCC and was accordingly issued the TOR. In terms of the procedure laid down in the EIA Notification, 2006 for Category A projects, the State Pollution Control Board was required to conduct public hearing in the affected area. The Board scheduled a date for public hearing however, the same could not be conducted as on enquiry it was found that there was grave opposition to the said mining lease as the affected villagers apprehended serious environmental degradation and loss of lands of the tribal inhabitants which could have led to unrest among the villagers resulting into large scale violence. Additionally, the NOC granted for mining lease also came to be cancelled as it was found that the lease area was surrounded by Sarlanka reserve forest for which the NOC was required to be granted by the Forest Department. The applicant approached the High Court which vide interim order suspended the cancellation of the NOC and directed the concerned authorities to conduct public hearing. However, despite several requests the same could not be conducted due to law and order situation in the area. Therefore, the applicant had to approach the Tribunal for appropriate directions.

The applicant contended that under the provisions of the EIA Notification, 2006 if the Board fails to conduct the public hearing, the regulatory authority should engage another public agency/authority to complete the same within specified time. Further, the provisions also provide for dispensing the requirement of public hearing and proceeding with the grant of EC on the basis of appraisal done by the EAC/MoEFCC.

It was argued by the MoEFCC that in view of the allegation of malpractice by the lease holder and pending enquiry by the State, the Ministry decided not to entertain the EC application. It was further stated that unless the State Government had cleared the allegations against the applicant, the Ministry was not in a position to process/or grant EC. Moreover, the TOR issued to the applicant were already expired and the subsequent TOR was obtained by suppression of material facts as the proceedings pending before the High Court were not disclosed in Form I/EC application. Therefore, even if an EC was granted, based on such suppression of facts, the Ministry was competent to cancel the EC. It was argued by the State that though the said cancellation was challenged and an order of suspension was passed, the matter was not finally decided and as long as the cancellation order was not upheld and NOC set aside, the very basis of the lease granted would be gone in which case holding of public hearing would be purposeless.

Therefore, the Tribunal found the non-completion of public consultation to be justified and while it was true that the MoEFCC could have cancelled the TOR or completed the public consultation and rejected the application, it did not find it proper to direct the MoEFCC to complete the public consultation process in view of the fact that the matter was subjudice before the High Court and in such circumstances, the applicant was not entitled to any reliefs sought in the application. Accordingly, it was dismissed.

Karpaga Vinayaga Aqua Industries
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Appeal No. 142/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: Packaged Drinking Water, Disconnection of electricity
Decision: Dismissed
Date: 26 October, 2016

JUDGMENT

This appeal was file challenging the order passed by the Tamil Nadu State Pollution Control Board ('Board') directing the respondents 2-4 to disconnect the electricity connection given to the drinking water unit of the appellant. The closure order was passed in exercise of the powers conferred to the Board under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for the reason that though the appellant unit came under the Category 2 of the packaged drinking water industries where under it was permitted to have electricity connection for the protection of membrane and maintenance of machinery, the unit could not utilize the connection for the purpose of production of packaged drinking water.

Upon inspection of the site, the Board found the unit using power for the purpose of production, which was in violation of the directions issued under the Tribunal's judgment in O.A No.40, thereby giving the Board enough reasons to pass the closure order. It was therefore held that where the said closure order was subsisting, the consequential order impugned in this appeal could not be challenged. Therefore, the appeal was dismissed.

Lingaraju
v.
The State of Karnataka & Ors
Application No. 233/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: Hot mix plant, Pollution, Siting
Decision: Dismissed
Date:27 October, 2016

JUDGMENT

The prayer in the original application was to shift the industry of the 13th respondent, a hot ready mix concrete plant, from a certain Survey in Gulakamel Village within the limits of the Uttarahalli Hobli, Bangalore. According to the applicant, the setting up of such a plant required statutory permission, which had not been taken by the respondent. Further, the applicant also stated that the operation of such a plant would cause environmental and health problems to the neighbors, due to which, shifting the industry was necessary.

However, the Tribunal was of the view that it could not pass any direction to shift the said industry from the said land to another location if it could not be reported lawfully. Therefore, the prayer made in the application could not be granted. It also stated that it did not appreciate why the relief sought for was the shift the industry from one place to another, as this would mean shifting the pollution from one place to another.

For such reasons, the relief sought could not be granted and accordingly, the application was dismissed. It was also made clear that the dismissal of this application would not be bar to the applicant to seek relief in accordance with law in an appropriate application.

Ramesh Babu P.M & Anr.
v.
State of Kerala & Ors.
Application No. 328/2013 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Quarrying, Mining, Environmental Clearance
Decision: Dismissed
Date: 28 October, 2016

JUDGMENT

This application was initially filed as a writ petition before the High Court of Kerala, seeking directions to stop the quarrying and mining operations conducted by Respondent No. 6-15 in the Pallichal Village of Thiruvananthapuram and to refrain the respondent authorities from granting any permits or licenses to the said respondents to continue such operations. The matter was subsequently transferred to the Tribunal.

It was the case of the applicant that the respondents had not obtained the necessary Environmental Clearance to carry on quarrying operations and such activities had adversely impacted the environment. On the other hand, the private respondents contended that they were existing leaseholders and were legally carrying out mining and quarrying operations for which no EC was required. It was also observed that the validity of the assignment granted to them had already been challenged and was pending before the High Court. The District Collector (Respondent No. 2) stated that it was taking strict measures against illegal quarrying in the entire District, in coordination with authorities from other competent departments.

When the application was taken up for arguments, the applicant, who had originally contended the necessity of an EC, went on to agree that such EC was not mandatory for mining in the existing lease area except for at the time of renewal. Meanwhile, the respondents'/quarry owners submitted that a Writ Petition was already pending before the High Court, wherein an order to stop all quarrying activities for the purpose of survey, had been passed and following such an order, no quarrying work was being carried out.

Considering the above, the Tribunal did not find it necessary to pass directions and allowed the applicants to approach it if necessary directions were not passed by the High Court. Accordingly, the application was disposed of.

Suresh Kumar T.P. & Ors.
Vs.
The Neelanadu Grama Panchayat, Venjaramoodu, Trivandrum District & Ors.
Application No. 404/2013 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Mining, Quarrying, Dust Emission, Respiratory Diseases
Decision: Dismissed
Date: 28th October 2016

JUDGMENT

This application was originally filed before the Kerala High Court seeking a writ of mandamus commanding the Neelanadu Panchayat to cancel the license granted to the 2nd respondent, M/s. Araman Rocks Pvt. Ltd. for mining and to take steps to protect the Kottukunnam Mala & for further directions to respondents 3-5, the Director of Mining & Geology Department, the District Collector and the Revenue Divisional Officer, Thiruvananthapuram to take steps to stop the functioning of the 2nd respondent's quarrying unit as it was causing severe impact on the environment due to high dust emission, shattering of rock particulates extreme and continuous grinding sound which exceeded the permissible noise level, disfiguration of hillock, change on the natural settings and soil character and loss of natural vegetation and loss of biodiversity and possibility of causing respiratory diseases to the residents of the locality.

In its reply, the 2nd respondent stated that it had obtained the required license for quarrying and that there was no adverse environmental impact due to its activities. According to the High Court, no EC was necessary in the case of an existing mining lease and in such circumstances, the application should be disposed of with a direction that the authorities should take action against the 2nd respondent for quarrying in excess of the land covered under the lease granted to them in view of the decision of Kerala High Court in Kerala River Protection Counsel v. State of Kerala. This was accepted by the respondents.

The Tribunal also agreed with the High Court's decision and stated that if the 2nd respondent had quarried any land in excess covered under the said agreement, the 3rd respondent or authorized officer was competent to take action against them, in accordance with law.

Accordingly, the application was disposed of.

M/s. Janajagrithi Samithi
v.
Union of India & Ors
Application No. 56/2012 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Forests, Sacred Groves, Special Economic Zone, Tree felling
Decision: Dismissed
Date: 28 October, 2016

JUDGMENT

The application prayed for direction against the respondents to stop the illegal felling of trees and use of pristine forest lands for industrial activities undertaken by the project proponent (5th Respondent). As per the applicant, the Government of Karnataka had given permission to the project proponent for the use of forestlands in Udupi District in an area named 'Devara Kadu' which were sacred forest and were significant from religious point of view. The area also observed habitats of various species of fauna and presence of Mulki river estuary. The tradition also mandated maintenance of Devara Kadu along with a nearby water body so that the forest would support the water tank in its catchment by percolating rain water into these tanks.

The applicant was aggrieved with the permission granted by the State of Karnataka allocating 259.32622 hectares of land in favour of the project proponent for developing Special Economic Zone (SEZ) which also consisted the forests of Devara Kadu. The applicant alleged that the project proponent attempted to use these forest lands for non-forest activity without obtaining permission under the Forest (Conservation) Act, 1980. The applicant pleaded that the forest lands were still intact and several representations were made to the Government to cancel the transfer. The applicant further submitted that the SEIAA had considered the project proposal for EC and exempted the same from public hearing which was a mandatory requirement for such project. Further, the Deputy Conservator of Forest wrongly contemplated that the area was not "deemed" or "notified" forest and therefore was not covered under the Forest (Conservation) Act, 1980 and on

this basis granted permission for felling of trees from the disputed forest area, pursuant to which the project proponent initiated felling of trees. On these grounds the applicant prayed for stringent action against the respondents and for restoration of the pristine forest to its natural state.

The question, which arose for consideration, was whether the area allotted to the project proponent constituted "Devara Kadu" and whether the said land would attract the provisions of the Forest (Conservation) Act 1980. The Tribunal was of the view that sacred groves deserved the highest level of protection and thus, understood the concern of the applicant, however, there was no concrete evidence to show that the disputed lands were part of the sacred groves. A comparison of records maintained by the Revenue Department indicated that the allotted land was not forest land, but instead, were government poramboke lands where Acacia plantation was undertaken which indicated degraded nature of the site without any plant diversity which could not be categorized as Devara Kadu. The Tribunal relied upon the verification done by the Assistant Conservator of Forests wherein it was found that the trees on the lands were planted and not naturally grown which indicated that the lands could not had been sacred and ecologically rich as was pointed out by the applicant. It was also observed that the lands were not part of the ESA in the Western Ghats Ecology Expert Panel report (WGEEP) Therefore, on the factual matrix, the Tribunal concluded that the land in dispute was not Devara Kadu and there were no records placed before it to conclude to that effect. The Tribunal further considered if the lands in question were "deemed forest" in light of the judgment of T.N Godavarman Thirumulpad vs. Union of India, (W.P No. 202 of 1995). It was noted that the said lands were nowhere mentioned in the expert committee report constituted pursuant to the said judgment. The lands also did not meet the requirement of "deemed forest" where the minimum extent of area is atleast 2 ha with a density of atleast 50 naturally growing trees of GBH 30 cm and above. Thus, the Tribunal concluded that the provisions of Forest (Conservation) Act, 1980 were not applicable in the present case and no question of violation of the same existed.

Accordingly, the application was dismissed.

M/s. Yes Yes Minerals
V.
Union of India & Anr.

Application No. 249/2016 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Justice P.S. Rao.
Keywords: Extension of Terms of Reference (ToR)
Decision: Dismissed
Date: 31st October 2016.

JUDGMENT

This application was filed for a direction to the respondents, MoEFCC to extend the validity of the Terms of Reference (ToR), which expired on 20.09.2016, till 11.01.2017. The applicant had previously approached the Tribunal for an identical direction by filing an application, which was disposed of directing the applicant to approach the concerned appropriate authority for the extension on 04.10.2016.

The Tribunal observed that the representation to the concerned authorities was dated 25.10.2015 and the current application was filed the very next day. Therefore, it was of the belief that if the applicant had taken 21 days to give a representation based on the Tribunal's initial order, it was absurd to expect the concerned authority to pass an order within 24 hours

Due to above circumstances, the Tribunal refused to entertain the application but stated that this would not prevent the concerned authority from passing appropriate orders. Accordingly, the application was dismissed.

Diwan Singh & Anr.
v.
Union of India & Ors
Original Application No. 299/2016 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Restoration of water bodies, wetlands, Ground water recharge
Decision: Allowed
Date: 1 November, 2016

JUDGMENT

The application was filed by the members of the Dwarka Water Body Committee seeking restoration, revival and protection of 33 water bodies located in Dwarka. The Applicants also sought constitution of an Expert Committee to oversee the restoration works, and direction to the DDA to change the land-use and direct removal of encroachments thereby restoring the water bodies to their original dimension. It was the case of the Applicants that Dwarka had already been notified as an area for control and regulation of ground water by the Central Ground Water Authority ["CGWA"] in the year 2000. Subsequently in 2015 permission to extract ground water from the said notified areas was granted only for the purposes of drinking water. As a consequence of this permission, the Applicants argued that a water scarcity crisis has occurred, making the protection of water bodies the need of the hour, while the matter is being ignored by the concerned authorities.

Referring to the Master Plan 2001, the applicants alleged that Dwarka is ideal for revival of water bodies, given that it is a low lying area which receives a large amount of storm water flow, which falls along the natural drainage basin where soil is highly permeable, and finally drains into the Najafgarh drain. The Applicants argued that failure to tap this potential water intake has resulted in depletion of fresh water aquifers in most parts of Dwarka. The applicants further submitted that they had approached various authorities and hold meetings with the Lieutenant Governor, whereby 33 water bodies were identified and action required for their revival/restoration was considered. However, no

tangible action in pursuance thereof was taken by the concerned authorities mainly the DDA. Thus, the applicants argued that the said authority has utterly failed in its responsibility to identify and document the water bodies, remove encroachments and prevent flow of sewage, municipal solid waste going into these water bodies.

The factual position was not refuted by the respondents. However, the MoEF brought into notice the fact that NCT of Delhi had not constituted the State Wetland/Lake Authority. Further, neither the list of lakes/wetlands were submitted under any of the National Lake/Wetland Conservation Plans nor notified under the Wetland (Conservation and Management) Rules, 2010 in absence of which the said rules could not be made applicable to the water bodies in question. It was further submitted by the respondents (MoWR, CGWA and CGWB) that a set of recommendations had already been provided in the inspection report of 2016 of the CGWB which were required to be implemented by the DDA for revival of the water bodies.

After perusal of the said report, the Tribunal concluded that the water bodies, as submitted by the Applicants, were subjected to illegal dumping, flow of sewage water, absence of maintenance like desilting/dredging and blockages of drainage channels leading up to them. The tribunal also took note of the fact that as mentioned by the Applicants, water bodies in Dwarka have an important role in recharging ground water and are suffering for want of proper care. The tribunal recognized the needs for monitoring of ground water by creating observation wells, and also the need to maintain storm water drains/construct peripheral drains. The Tribunal referred to the fact that Dwarka had been declared as a notified area, and if adequate measures were taken, then by tapping the surface run off into water bodies, ground water could be recharged. Further, the Tribunal also gave weightage to the fact that as per the study conducted with the help of Delhi University, revival of 2 water bodies helped to improve the water table by a sufficient amount to conclude that the recommendations of the CGWB report and the measures outlined by the LG would help in revival of the water bodies.

The Tribunal highlighted the significance and crucial role of the water bodies and wetlands in ground water recharge, maintaining aquatic biodiversity, regulating temperatures and being an important source of drinking water. It emphasised on the need to protect and preserve the water bodies in light of the judgements passed by the Hon'ble Supreme Court in the M.C Mehta v. UOI (2004) and M.C Mehta v. Kamal Nath (1997) holding that water bodies are a public resource to be maintained and preserved. It also referred to Hinch Lal Tiwari v. Kamala Devi (2001) to reiterate the duty of the government to clean and develop ponds thereby preventing ecological disasters.

Based on the considerations stated above, the Tribunal allowed the application, directing the DDA to inventorize all water bodies and prepare a comprehensive management plan for their revival and to take all steps for removal of illegal encroachments and wastes within 3 months. Additionally, a team was constituted to monitor the progress of identification, documentation, revival and monitoring of water bodies, as well as the implementation of the plan prepared by DDA and the CGWB recommendations of 2016.

This team was expected to submit a 6 monthly report of the progress. The Tribunal also directed the Revenue Department of Govt. of NCT Delhi to include water bodies already identified in the CGWB report in the revenue records, and clearly demarcate their zone of influence/catchments. The Govt. of NCT Delhi was directed to submit a proposal for declaration of already identified wetlands under the Wetlands (Conservation and Management) Rules, 2010 within 3 months, and the MoEF & CC were also directed to do the same after the receipt of proposal from the Govt of NCT Delhi. The Tribunal directed the Govt. of NCT Delhi and the DDA to ensure that all water bodies are identified/will be identified, and that there would be no invasive land use (construction, infrastructural or otherwise). The Horticulture Department of DDA was also directed to prepare a management plan for greening of the area with local indigenous species, and DDA to make budgetary provision for survey, identification and restoration of water bodies. The DDA was also directed to survey and map all the primary, secondary, tertiary drains leading to water bodies and make provisions for their diversion. In giving connectivity between drains and water bodies, the Tribunal directed that due consideration be given to watershed/catchment of each of the water bodies. Finally, the tribunal directed that in consonance with the Delhi Jal Board, no domestic sewage should be allowed to enter into water bodies, and that already flowing should be diverted/trapped into septic tanks.

With the said directions, the application was disposed of.

P. Shanmugam
v.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 297/2013 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Stone Crushing Units, Closure, Consent
Decision: Dismissed
Date: 1 November, 2016

JUDGMENT

This application was filed seeking a direction to the State Pollution Control Board to take appropriate action to close down all Stone Crushing Units functioning in and around Thiruneermalai, whilst another application (OA No. 250 of 2013) was filed for a direction to the concerned authorities (Asst. Engineer, Operation & Maintenance and District Collector) to comply with the direction given by the 1st respondent. The second application was eventually disposed, as the Board had taken action for the same.

With regard to the current application, the applicant was aggrieved by the fact that more than 50 stone crushing units in the disputed area had been operating without consent. It was later discovered that the Board had rejected applications filed for consent and those orders were eventually challenged before the Appellate Authority, which were again dismissed and the industries filed appeals before the Tribunal.

In view of the same, the Tribunal dismissed the application as it did not find it necessary to issue any directions to the Board as the Board could only proceed according to the orders to be passed by the Tribunal in those appeals.

Shailesh Singh
v.
State of Uttar Pradesh & Ors.
Review Application No. 28/2016
in
Original Application No. 322/2016 (PB)

Coram: Hon'ble Dr. Justice Jawad Rahim, Hon'ble Mr. Justice Ranjan Chatterjee
Keywords: Review Limitation
Decision: Dismissed
Date: 2 November, 2016

JUDGMENT

The applicant by way of the present application sought review of the order passed by the Tribunal in the above mentioned OA, which was filed by the same applicant against the slaughter house of the private respondent which was running without obtaining valid consent /permission from the State Pollution Control Board. The Tribunal vide order dated 18 July, 2016 disposed of the said application in view of the fact that the applicant was successful in obtaining consent from the Board and the Hon'ble Supreme Court by way of an interim order had allowed the unit to operate. The Tribunal also relied upon its order dated 2 February, 2016 passed in a similar matter titled as Javed Akhtar vs. State of UP & Ors.

The applicant alleged that the Tribunal while disposing of the OA had not considered the other issues raised therein with respect to extraction of heavy quantity of ground water by the said respondent and therefore prayed for a review.

The Tribunal rejected this contention on two grounds. First, that the said dispute was not canvassed by the applicant in the OA and secondly the review was filed beyond the period prescribed under Section 114 of the CPC, read with Order 47. The Tribunal noted that review is permissible only when the applicant satisfies the court or tribunal that there is error apparent on record/vital evidence has been ignored/new facts have been discovered, or the position of law has somehow changed. The Tribunal dismissed the application holding that except in the above mentioned circumstances, review is barred

under Section 114 of the CPC, where statutory appeal under section 22 of the NGT Act is provided which could have been availed by the applicant in the instant case.

Therefore, the application was rejected for being barred by time, and being devoid of grounds justifying acceptance of the review application, with no order as to costs.

Mr. Sagardeep A. Sirsaikar & Anr.
Vs.
State of Goa & Ors.

Application No. 82/2013 (WZ)

Coram: Hon'ble Justice U.D Salvi and Hon'ble Dr. Ajay A. Deshpande
Keywords: Coastal Regulation Zone (CRZ), No Development Zone (NDZ), Limitation, Illegal hotel construction, Restoration.
Decision: Disposed
Date: 3rd November 2016

JUDGMENT

In this application, the applicants had challenged the development of a beach side hotel in Anjuna village, Bardez, Goa by M/s Diana Buildwell Pvt. Ltd (Respondent No. 10). According to the applicants, on 25/05/2015 they had noticed hill cutting activities going on near the base of the Chapora Fort hill and ongoing construction of the road and helipad near the Fort, a heritage site, which was covered within CRZ-I zone as per the CRZ Notification 2011. The applicants then referred to the inspection reports of Goa Coastal Zone Management Authority ("GCMZA"), Archaeology Department and report of Goa State Biodiversity Board to indicate certain irregularities and illegalities in the project. The applicants had classified the irregularities and illegalities in different areas covered under the CRZ notification and had stated that several illegal developments like deep excavations, hill cutting and leveling of land were made without approval of the authorities and in violation of CRZ Notification, 2011. Further, the applicants submittted that the construction activity of the hotel could had only been permitted by obtaining prior clearance of the MoEF as per the CRZ Regulations which was not obtained in the present case. The applicants also alleged that the authorities were not serious in ensuring compliance of CRZ Notification and taking stringent action on the violations as per law. The applicants later filed an additional affidavit on 12/03/2016 alleging that Respondent No. 10 had subsequently constructed number of swimming pools/bathing tanks in CRZ-III NDZ area. Accordingly, the applicants prayed for the appointment of an expert

committee to look into the extent of damage caused and for an order directing the respondents to stop the illegal construction.

In response to the application, Respondent No. 9 (Village Panchayat) contended that they had not indulged in any illegality and would abide by the order of this Tribunal. The Village Panchayat submitted that the construction carried out by the respondent builder was duly approved by them as local authority with the condition that the said Respondent had to take prior permission under CRZ. The respondent No 9 further revealed that they issued stop work notice on 01/06/2015 to Respondent No. 10 when Town & Country Planning Development inspected the property on 13/05/2015 and requested Panchayat to take appropriate action for additional structures developed by Respondent No. 10 without taking clearance. Further, Respondent No. 9 submitted that a joint inspection was conducted by Town Planning department and Panchayat of the construction site on 04/09/2015 in which it was noticed that Respondent No. 10 had removed the illegal structures. Respondent No. 10 contended that after obtaining necessary approvals and permissions the property was purchased by it from Sterling Hotel Resort Limited vide sale-deed dated 11/05/2007. Further, it was submitted by Respondent No. 10 that an application dated 12/10/2011 was moved before GCZMA for construction and extension of the project which was accompanied by EIA report. On submission of the application, GCZMA informed Respondent No. 10 that if the built-up area was beyond 20,000 sq.m. the project would be considered by MoEF. Thereafter, a revised proposal was submitted by Respondent No. 10 in which the built-up area was reduced to 19,800 sq.m. and it was submitted that the proposal did not come under the purview of EIA Notification, 2006. Respondent No. 10 submitted that GCZMA after considering the recommendations of Goa State Environment Impact Assessment Authority (SEIAA) issued NOC to re-construct all the existing Resorts/Hotels subject to terms and conditions mentioned in the letter dated 26/02/2013 and that the construction work commenced in the month of October, 2013 after necessary approval from Town Planning Department and Village Panchayat. Respondent No. 10 also contended that the application failed to disclose cause of action and was barred by limitation. Respondent No. 10 also denied the allegations raised by the applicants vide the additional affidavit filed on 12/03/2016.

After considering the contentions, the Tribunal dealt with three main issues in the present application. First, whether the application was barred by limitation. Second, whether NOC/Clearances issued by GCZMA could be regarded as CRZ clearance under the CRZ Notifications. Third, whether construction of additional structures violated the restrictions imposed under the CRZ Notification, 2011.

Considering the first issue, the Tribunal opined that the application did not challenge the NOC/Clearance but the authority of the GCZMA to grant such NOC. The Tribunal further opined that Application was covered under Section 15(3) of the National Green Tribunal Act, 2010 as applicants moved an application for restoration of environment and the damage caused after the inspection carried out by GCZMA. Under Section 15(3) the period of limitation mentioned was 5 years and thus the first issue was answered

negatively. Coming to the second issue, the Tribunal noted that the chief bone of contention raised by the applicants was that NOCs/Clearances issued by GCZMA were not valid in law as GCZMA was not empowered to issue such CRZ clearance under the CRZ Regulations, 2011. In this respect, the Tribunal examined two communications by GCZMA dated 26/02/2013 and 28/03/2014. In the former communication, the subject referred to reconstruction of the existing Resort/Hotel in certain survey numbers beyond 200m of Anjuna Village and in the later communication the clearance granted on 26/02/2013 was extended upto 25/02/2018. The moot point of discussion revolved around the competent authority to grant clearance under paras 4.2(ii)(b) and 8(i)(III)(B)(i) of CRZ Notification, 2011.

The Tribunal noted that in the present case the structures were proposed to be demolished and new construction was to be done in the said property and therefore the Tribunal opined that this could not be considered and deemed as development on a vacant plot which made para 8 of the Notification inapplicable. With regards to para 4.2, it was noted that the position for delegation of power was substantially amended as per the amendment dated 28/11/2014 and thereafter the provision provided that only MoEF or SEIAA were competent authority to issue the CRZ clearance.

The Tribunal further noted that the project was appraised by Goa SEIAA on 07/02/2013 and was further recommended for appraisal as per the provisions of CRZ Regulation, 2011. Accordingly, the Tribunal opined that both the environmental as well as coastal impacts of the project developments were appraised by the authorities but the GCZMA had misinterpreted the provisions of para 4.2 and had issued the CRZ clearance themselves and had usurped the power to grant CRZ clearance which vested in Goa SEIAA. Thus the issue two was also answered in negative. However, the Tribunal noted that for such procedural lapse liability could be construed to Respondent No. 10 as this was not the result of any such specific submission or information provided by the Respondent. Coming to issue no. three, the Tribunal at the very outset noted the topography of the project site and also referred to the Inspection Report of different authorities to understand the nature and scale of the violations observed by the authorities. GCZMA conducted inspection on 14/05/2015 and subsequently on 28/08/2015 and observed that Respondent No. 10 had removed the illegal constructions and had complied with the directions issued by GCZMA. Goa State Bio-diversity Board also submitted a report on 13/05/2015 and pointed out that hill cutting and land filling had been carried out to facilitate construction of road leading uphill to a helipad. The report also indicated presence of indigenous herbaceous floral species including sand dune flora. Likewise two other reports were submitted by Town Planning Department and Archaeological Department. After taking note of the reports and the material on record, the Tribunal came down heavily on Respondent No. 10 for constructing Rain Water Harvesting Tank (RWHT), which according to Tribunal were camouflaged to be RWHT but were in fact private swimming pools, illegally and by abusing the process of law. Further, the Tribunal noted that there were other unauthorized constructions like car par parking and road leading to sea constructed by Respondent No. 10 and opined

that such constructions had to be re-examined by GCZMA and Town Planning Department. The Tribunal also noted hill cutting near Chapora Fort, stepped access, helipad and landscaping in CRZ-I area and opined that the GCZMA should carry out necessary inspection through its members and ensure that the restoration of the area be completed expeditiously. The Tribunal also noticed the non-compliance by the GCZMA to host all complaints, inspection reports, clearances, directions etc. on its website in spite of such specific directions given in the past.

In view of the above, the Tribunal directed GCZMA to place the case of Respondent No. 10 before Goa SEIAA within four weeks and to appoint a committee to assess the damage caused to the environment by unauthorized and illegal construction and prepare and execute a plan within three months for restoration. GCZMA and Respondent No. 10 were directed to deposit Rs. 5 lakhs and Rs. 10 lakhs respectively with the Collector, North Goa for Coastal protection and sanitation facilities in Coastal area. The Tribunal directed that the entire cost of restoration was to be borne by Respondent No. 10 and also directed Respondent No. 10 to tentatively deposit Rs. 5 crores with the Collector of North Goa. Further, Respondent Nos. 1 to 3 were directed to demolish RWHT and other other illegal structures falling in the NDZ within eight weeks. Finally, the Tribunal directed GCZMA and Town Planning Department to re-examine the issue of development of road and car parking.

Accordingly, the application was disposed of.

M/S Munjal Showa Limited

v.

Appellate Authority, Haryana State Pollution Control Board & Ors

Appeal No. 3 of 2013 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Principle of Strict Liability, Principle of Polluter Pay, Restoration
Decision: Dismissed
Date: 3 November 2016

JUDGMENT

The High Court of Punjab and Haryana transferred the case to the NGT, which was originally a civil writ petition praying that the industry of the petitioner, in the business of manufacturing shock absorbers and gas springs, should not be closed down. It was the case of the appellant that the respondent board illegally passed an order for closure of the petitioner unit, despite the fact that the appellant took all remedial measures directed by the board, such as the implementation of a remediation plan, to undo damage to ground water caused by other unregulated units in its vicinity. The respondent board has asked the appellant for a bank guarantee for an amount of Rs 5. crores, which the appellant contested was a direction without authority. Thus, the issues for the consideration of the tribunal were; first, whether the Haryana State Pollution Control Board had the authority to require bank guarantee of Rs 5. Crores, second, whether the orders passed by the board were illegal, and third, whether the appellant industry was causing pollution. With respect to the first issue, the respondent argued that under the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, it had the power to impose any conditions including requiring a bank guarantee while permitting an industrial unit to generate effluents or emissions in the course of its manufacturing activity. The tribunal accepted this argument on the ground that if the board established a due nexus between the requiring bank guarantee and performance of directions by the industry, the power to ask for bank guarantee cannot be questioned, and in any case the appellant industry is a highly polluting one and

therefore is stopped from challenging the validity of such a condition. With respect to the second issue, the appellant had challenged the orders for being arbitrary/based on extraneous considerations without accounting for the pleas of the appellant and the fact that the industry had been found non-polluting.

The tribunal rejected the plea of the appellant that the principles of natural justice were adhered to and there was any illegality in the order, as the appellant industry was found to be a polluting industry as far back as 2009, and the impugned orders were passed only after the industry continued with its high levels of pollution/generation of Hexavalent Chromium. The argument of the appellant that the pollution was caused by other industries was also rejected, as it was found that the appellant industry generated immense pollution, and in any case action had also been taken against the other industries. The tribunal therefore found a clear nexus between the prevention and control of pollution and imposition of bank guarantee and found the orders within the powers of the board under the air and water acts. At the same time, the tribunal expressed its inability to comprehend why the board kept permitting the industry to carry on its manufacturing and electroplating activities despite such heavy pollution, and rejected the argument of the industry that it had obtained the consent of the board to operate in the manner it was, and therefore should not be considered contributor to any pollution.

The tribunal then examined the applicability of the principle of strict liability, incorporated in Section 17(3) of the NGT Act, as per which an enterprise is under an obligation to provide that a hazardous/inherently dangerous activity it engages in will be conducted with the highest standard of safety on account of the accident in the operation of such activity. It was held that on applying this principle the appellant industry would be responsible to pay environmental compensation. Further, the appellate industry had challenged the order passed by the appellate authority on the ground that it ought to have set aside the order passed by the board, but instead it upheld the forfeiture of Rs 1.25 crore of bank guarantee given by the appellant. This challenge was dismissed by the tribunal. Similarly, the contention that the board was to be blamed for not giving advice under Section 16 of the Water Act was also rejected, with the reasoning that the remediation plan had already been accepted and in any case no further advice had been sought. With respect to the last issue, the tribunal found that the appellate industry did not have permission from the Central Ground Water Authority, had failed to install measuring instruments online for the Hexavalent Chromium, and had been indiscriminately polluting groundwater, rendering land and water of other properties unfit for human consumption as well. The polluter pays principle was applied, and directions were issued under Section 15 and 17 of the NGT Act, requiring the industry to prevent and control pollution, as well as restore and rejuvenate the contaminated ground water, within a period of 5 years. The application was thereby disposed of.

A.B. Jagadeesan
v.
Union of India
Application No. 38/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Agricultural Land, Environment Clearance
Decision: Dismissed
Date:4 November, 2016

JUDGMENT

This application was filed by farmers and residents of the disputed area, who challenged the construction of a Truck Terminal Yard complex by the 5th respondent (the Government of Tamil Nadu) as the area was stated to be fertile agricultural lands where vegetables and other crops were being cultivated.

The applicants were most aggrieved by the construction of the compound wall of the complex as they felt that the project was likely to proceed without obtaining Environmental Clearance and following other statutory requirements.

The 5th respondent submitted that no such complex was being constructed by the Rural Development and Panchayat Raj Department and that the respondent was in no manner connected with the project mentioned in the application, further stating that it was the Chennai Metropolitan Development Authority ('CMDA') which was planning to construct the complex, for which no planning permission had been issued. Later, it was found that the 5th respondent, in its reply, had missed the word "not", thereby clarifying that the CMDA was not planning to construct the complex, thereby addressing the petitioner's grievance.

The applicant, dissatisfied by the 5th respondent's reply, further submitted that if not the 5th respondent; it was the CDMA, which had decided to take up the project, which was at the primary stage of land acquisition. The CDMA stated that it had acquired all requisite clearances and that it would proceed with the project only after obtaining the EC.

It was also brought to the attention of the Tribunal that the acquisition proceedings of the project were challenged and were pending before the Madras High Court; similarly, the EIA Notification's amendment concerning open sky projects was also under challenge before the High Court. Considering the same, the Tribunal dismissed the application, as it was the High Court's decision that would be binding on both the parties.

V. Ramasubbu
Vs.
Union of India & Ors.
Application No. 83/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: EC, Violation
Decision: Dismissed
Date: 7th November 2016

JUDGMENT

This application was filed seeking a direction to the 1st respondent (MoEF & CC) to not consider the application for Environmental Clearance submitted by the St. Xavier Catholic Medical College & Hospital, and to further direct the MoEF & CC to prosecute the aforementioned respondent for violation of the Environment (Protection) Act, 1986.

The Tribunal stated that the relief sought for in this application could not be granted. It stated that in law, when a complete application is filed in Form I, it is to be proceeded as provided in the EIA Notification after which EC is either granted or rejected and therefore, if the applicant believed that the respondent hospital was not entitled to get the EC, his only remedy was to file an appeal challenging the same as opposed to seek directions to stop the MoEF & CC from considering the application.

Accordingly, the application was dismissed.

M/s. Sripathi Paper & Boards Pvt. Ltd.
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 34/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Hazardous Waste, Transportation
Decision: Disposed
Date: 8th November 2016

JUDGMENT

This appeal was directed against the impugned order of the Pollution Control Board by which the Board had issued directions to the appellant to re-export an entire cargo of 10 container stated to be loaded with hazardous waste materials.

The Tribunal had given directions permitting the Board to obtain approval for transportation as the appellant had agreed to re-transport the same after completion of excise formalities. The Board submitted that it had already processed the matter and the Member Secretary would pass order permitting re-transportation which had to be carried out by M/s. India Cements Ltd., based on an agreement between the appellant and M/s. India Cements Ltd. and the transit was to be monitored by the Board.

In view of the same, the Tribunal directed the Member Secretary to pass appropriate orders within one week from the date of the Tribunal's order and thereafter, monitor and file a status report with the Registry within a month, when the transfer was affected. On passing such an order, the Commissioner of Customs should permit the transit.

With the above direction, the application was disposed of.

Meenava Thanthai K.R. Selvaraj Kumar
v.
The Chief Secretary, Government of Tamil Nadu & Ors.
Application No. 196/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: EC, CRZ**,** Petroleum Storage
Decision: Dismissed
Date: 9 November, 2016

JUDGMENT

This application was filed for a direction to the respondent authorities (Respondents No. 1-10) to take action against the respondent company (Respondent No. 11) for encroaching the Kosasthalaiyar River and adversely affecting the livelihood of fishing communities in the area. Respondent No. 11 had shifted the new petroleum storage installation from Tondiarpet of Athipattu village to Ponneri Taluk of Vallur village. The applicant argued that the respondent's actions went against the CRZ Regulations and since they hadn't received approval under the same, they were not entitled to proceed. However, it was seen that the respondent had obtained, both, the EC and the CRZ clearance.

Further, the applicant did not pray for challenging the EC granted by authorities; hence the relief prayed for in this application could not be given to the applicant.

In view of the same, the application was closed, giving liberty to the applicant to work out his remedy in a manner known to law.

N.S. Subramaniyan
v.
The District Collector & Ors
Application No. 13/2013 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Garbage Dumping, Water Pollution, Solid Waste Management
Decision: Allowed
Date: 10 November, 2016

JUDGMENT

This application was filed for a direction against the official respondents to stop dumping of garbage, including hospital waste, chicken waste and fish market waste in the Villupuram District near Chennai and to direct the 5th respondent Municipality to remove the wastages already dumped in the dumping yard as this had led to the spreading of diseases like Chickungunya, Malaria, Dengue etc, It was also stated that by virtue of this dumping on the banks of the Komugi River, there was seepage, affecting the drinking water as well as water used for irrigation purposes.

It was stated that the compost yard in the place concerned was established in the year 1962 when the 5th respondent was a Town Panchayath which was subsequently upgraded as Municipality. It was also stated that the garbage generated by the 5th respondent, Municipality is nearly 20 MT per day and the Municipality had been searching for a new place.

Based on the above facts, the Tribunal granted an order of injunction against the Municipality restraining them from dumping garbage and waste on the disputed sites. In a subsequent affidavit filed by the 5th respondent it was stated that from the date of this order the Municipality had stopped dumping garbage in the said place and the Municipality was taking steps to prevent the same.

In view of this categorical stand taken by the Municipality, the Tribunal issued directions to the 5th respondent to not dump in the said place near the river and it was left open to the respondent to find a suitable alternative place and establish a sanitary landfill with

the permission of the appropriate authority under the Solid Waste Management Rules, 2016. Directions were also issued to the Municipality to take appropriate steps by way of a scheme for the purpose of restoration of the area and to scrupulously follow the SWM Rules, 2016.

With the above directions, the application was closed.

N. Rajendran
v.
The Commissioner, Rasipuram Municipality & Ors
Application No. 14/2012 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Dumping Yard, Water Bodies, Solid Waste Management
Decision: Disposed
Date: 10 November, 2016

JUDGMENT

This application was filed by a resident of Therkupatti Village, for a direction against the respondents to not set up any dumping yard in Survey No. 462/1C and to issue suitable directions to the authorities concerned, as the place chosen for the dumping yard was surrounded by many water bodies, along with cultivable lands and human habitation.

The applicant, by way of a letter from the Rasipuram Municipality, was informed that no solid waste would be dumped in the area for the time being. When a compound wall was attempted to be constructed in the disputed area, the residents objected to the same after which another place was chosen for setting up the dumping yard. Despite having an alternative place, it was submitted that dumping had taken place in the disputed site, following which the current application was filed.

The Tribunal stated that it was the 1st respondent's duty to implement the Solid Waste Management Rules, 2016 in letter and spirit, which not only narrated the duties of the producer of the waste, the local bodies and the government but also contemplated sensitizing the people on segregation of waste for scientific disposal. Therefore, the 1st respondent was under the duty to initiate the source of segregation, informing the people in the area about the kinds of waste material to be segregated, by publishing pamphlets and handouts in the local language. The Government was also instructed to circulate the Tamil version of the Rules to all the authorities, which was not implemented. To this, the Government submitted that steps were being taken for the same.

Considering that the respondents had affirmed that steps were being taken for the purpose of obtaining approval from the competent authority, the Tribunal was of the view to dispose of the application. The 1st respondent also gave a Scheme in respect of the Solid Waste Management which showed the population in the disputed area, the projected population, the amount of garbage generated per day and the land required for the composting plant. Following this, the Tribunal directed the 1st respondent to proceed with the Scheme by strictly conforming to the Rules and clarified the Tribunal's role in passing appropriate orders for failure of the respondent to obtain permission before proceeding with the activity of the dumping yard. It was also clarified that there was no longer a provision of establishing a dumping yard and was only scientifically designed to secure a landfill site as per the Rules.

With the above direction, the application was closed.

S.P. Surendranath Karthik
Vs.
President, Medavakkam Panchayat & Ors.
Application No. 179/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Dumping, Municipal Solid Waste
Decision: Disposed
Date: 10th November 2016

JUDGMENT

This application was filed for granting a permanent injunction against the respondents from illegally and wrongfully dumping Municipal Solid Waste in Survey No. 232 in the Medavakkam Panchayat limit. However, it was found that the 1st respondent was not actually dumping solid waste in the disputed area but such activities were being carried out by the 14th respondent, the Kovilambakkam Town Panchayat.

In their order dated 18.10.2016, the Tribunal had recorded the statement of the Greater Chennai Corporation wherein the 14th respondent had been permitted to use the Pergundi dumping yard for dumping waste generated within its panchayat area and an order in that effect had been passed by the Commissioner of the Corporation.

In view of the 14th respondent being permitted to dump its waste in the dumping yard and that dumping in the disputed area had not taken place, the prayer sought for by the applicants had been met by the conduct of the respondents. Directions were given to the 14th respondent to strictly follow the Solid Waste Management Rules, 2016 and ensure the segregation of waste into biodegradable and non-biodegradable components followed by conversion of the former into compost.

With the above direction, the application was closed.

Mrs. Maria Filomena & Ors
v.
Village Panchayat Of Colva
Review Application No. 13 of 2015
In
Appeal No. 35 of 2014

And

Mrs. Maria Filomena
v.
GCZMA
Review Application No. 14 of 2015
In
Appeal No. 33 of 2014 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Maintainability of Review Application in view of appeal withdrawn before Supreme Court
Decision: Dismissed
Date: 10th November 2016

JUDGMENT

The review applications were filed against the common judgment and order passed by the Tribunal on 02.07.2015 wherein the Tribunal upheld the decision of the Goa Coastal Zone Management Authority ('GCZMA') directing demolition of illegally constructed retaining wall along the sea, concrete rings along the coconut trees and parking lot comprising of concrete balusters constructed in village Sernabatim, Salcete Taluka Goa and restoration of the land to its original condition.

The review applicants before filing the present applications preferred appeal before Supreme Court against the judgment of the Tribunal as per Section 22 of the NGT Act. The appeals before the Supreme Court were dismissed as withdrawn as per the order of the

Supreme Court on 12.08.2016. In the present applications, a preliminary issue rose as to whether the present applications were barred before the Tribunal as per the provisions of Section 114 read with Order-XLVII, Rule I of the Civil Procedure Code, 1908. The bone of contention of the applicants was that while granting leave to withdraw the appeal, the Supreme Court by exercising its power under Article 142 of the Constitution of India mandated the Tribunal to ignore the concerned provisions of the CPC. To support the claim, the applicants relied on various judgments of the Supreme Court wherein the court had allowed procedural relaxation to do complete justice as mentioned under Article 142. Thus, on the basis of the same, the review applicants argued that the Tribunal should hear the matter on merits since the preliminary issue as to whether the review applications can be entertained was already been determined by the Supreme Court vide its order dated 03.08.2015 in Civil Appeal No. 5733/5734 of 2015 wherein the review applicants were given liberty to file an appropriate review petition before the Tribunal.

The Tribunal after considering the relevant facts opined that while granting the leave to withdraw the appeals, the SC merely granted liberty to the Review Applicants to seek their remedy as per law. In the instant case, the review applicants preferred a substantive appeal under Section 22 of the NGT Act against the impugned order of the Tribunal and invoked the jurisdiction of the Apex court. Having exercised the option to withdraw such appeals and giving up the remedy of wider assessment of the merits in the appeal which rendered the impugned order attain finality, the applicant's right to prefer review were lost. Further, the Tribunal also noted that no order/directions had been issued by the Apex Court to the Tribunal to ignore the provisions of Section 114 and other relevant provisions of the CPC and enter into the merits of the review applications afresh.

Accordingly, the review applications were rejected with no order as to costs.

Perundurai Common Effluent Treatment Plant
v.
Tamil Nadu Pollution Control Board & Ors
Application No. 171/2016 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: N/A
Decision: Disposed
Date: 11 November, 2016

JUDGMENT

This application was originally filed before the Madras High Court seeking a writ of Certiorari calling for the records of the respondents in a letter-dated 10.01.2011, wherein the 1st respondent (State Pollution Control Board) had requested the applicant to remit a certain fine amount.

When this Tribunal took up the application, the applicant submitted that he had already made a representation to the Board, which had sought clarification and the Board was expected to pass an order. Subsequently, the Board filed an affidavit, which disclosed that out of the total fine amount of Rs. 3,62,07,000 the applicant had deposited only Rs. 1,44,00,000 and had requested a waiver of the balance amount. The Board, by way of letters and through the District Environmental Engineer had requested the applicant to pay the balance amount. When the Board submitted that orders on the representation of the applicant had already been passed and had been communicated to the applicant, the applicant denied receiving a copy of the order.

The Board submitted that it would furnish a copy of the order to the applicant immediately and the applicant was at liberty to challenge the same, if he was aggrieved.

Accordingly, the application was disposed of.

Ajanta International Vipassana Samiti & Ors.
Vs.
Mr. Popatlal Mohanlal Chordiya & Ors.

Application No. 80/2016 (WZ)

Coram: Hon'ble Justice U.D. Salvi and Hon'ble Dr. Ajay A. Deshpande
Keywords: Stone mining, Stone crusher, Noise Pollution, Air Pollution, Environmental Clearance, Consent, Compensation
Decision: Disposed
Date: 11th November 2016

JUDGMENT

This application was filed seeking direction to stop illegal business of stone mining and crushing activities carried out in Gat No.41, Village Rampuri in Aurangabad. Further, directions were sought against the Government Authorities to take appropriate action against the illegal stone crusher machines in the aforementioned area. The applicants submitted that they were engaged in imparting Vipassana meditation training to their disciples which required a silent environment and the activities of the respondents caused noise and air pollution, thereby obstructing their meditation activities.

The respondent No. 1 submitted that he had already applied for environmental clearance and that the activities were carried out in the past as per the permission granted by the Tahsildar of Aurangabad. He further submitted that the stone crusher had just been installed and no activities would be carried out without obtaining necessary permissions. It was also submitted by the respondent no. 7 that the allegations regarding the noise and air pollution were not true and that the Vipassana Centre was more than 1 km away from the stone crushing site and considering that necessary permission had been taken from the Maharashtra Pollution Control Board, there was no material on record to show any environment damage due to the stone crushing activities. In reply to the application, the Board submitted that the respondent No.2 had been operating the stone crushing activities without obtaining consent to operate and had been issued with a voluntary

closure notice as well as directions under the Air and Water Act for disconnection of electricity and water supply. The Board also submitted that it had not received any complaint regarding air/noise pollution.

Considering the above contentions, the Tribunal while disposing the application issued directions against Respondents 1,2 and 7 not to carry out stone crushing activities without obtaining necessary permission and consents and that they should develop a green belt in the edge of the area in question in the direction of the Vipassana centre to mitigate the problem of noise and air pollution. Further, environmental cost of Rs. 1 lakh was imposed on respondent no. 2 & 7 for operating without consent and the board was directed to ensure that the stone crushing activities are only allowed with strict compliance of conditions specified in the consent.

Accordingly, the application was disposed with no order as to costs.

Sulif D.
Vs.
The District Collector, Nagercoil, Kanyakumari District & Ors.
Application No. 214/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Quarry Lease Agreement, EC
Decision: Dismissed
Date: 15th November 2016

JUDGMENT

This application was filed for a direction against the respondents 1-9 namely, the District Collector and the Superintendent of Police of Nagercoil, Kanyakumari District, the Commissioner of Geology & Mining and the Assistant Director of Department of Geology & Mining, the Member Secretary of State Level Environment Impact Assessment, the Chairman of Hill Area Conservancy Authority-cum-Secretary to the Government, the Director of Mines Safety, the Revenue Divisional Officer of Padmanabhapuram Division and the Tahsildar of Kalkulam Taluk to preserve the area mentioned in the quarry lease agreements of respondents 10-16 namely, Mr. L. Charles, Mr. R. George Antony, Mrs. Sreema, Mr. A. Viyakulamuthu, Mr. G. Abraham and Mr. M. Vargheese Rajkumar in Kanyakumari District from causing damages by way of quarrying. It was the case of the applicant that some of the condition with which permission was granted by the Collector for quarrying, had been violated as the respondents had been quarrying more than the permissible quantity, which might result in an environmental issue.

On the face of it, the Tribunal was unable to accept the applicant's contention and stated that an appellate remedy was available under the relevant statute. This was because the Tribunal was constituted for the purpose of deciding the dispute related to environmental issues, which arose under any one of the 7 statutes, contemplated under Schedule I of the NGT Act and could not be expected to make enquiries about other cases.

For the current application, the Tribunal stated that the District Collector had granted the lease based on the EC granted by SEIAA which was competent to give permission as per the EIA Notification and it was presumed that the SEIAA had been looking into the Environment Impact Assessment prior to granting the EC. Therefore, unless and until the

particulars were given about the nature of the violation of conditions of the EC and the person who violated, it was not appropriate for the Tribunal to go into the matter.

Under these circumstances, the application was disposed of.

Khilar Singh
v.
Union of India & Ors

Review Application No. 27 of 2016
In
Original Application No. 36 of 2016 (PB)

Coram: Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Review Jurisdiction
Decision: Dismissed
Date: 15 November 2016

JUDGEMENT

The applicant sought review of the judgment passed in the original application. The Tribunal dismissed the application holding that the same was beyond the scope of order XLVII CPC and Section 19 (4) (f) of the NGT Act 2010 since it does not disclose any error apparent on the face of record and the arguments raised at the stage of review were on the merits of the case which are not permissible under review jurisdiction.

N. Subramaniam

v.

The Chairman, Tamil Nadu Pollution Control Board & Ors

Application No. 260/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Dumping Yard, Solid Waste Management, Landfill Site, Biodegradable Waste
Decision: Disposed
Date: 17 November, 2016

JUDGMENT

In this application, the applicant prayed to refrain the 4th respondent, Executive Officer Town Panchayat, Erode District from setting up a dumping yard in the Noyyal Riverbed as it was in violation of the Solid Waste Management Rules, 2016, particularly, Rule 15 which contemplated the procedure for the purpose of disposing of solid waste. According to this rule, no Municipal Authority or local bodies have the authority to choose others' land as a dumping yard.

The Tribunal, in various cases related to the SWM Rules, had directed all the authorities and persons generating waste to follow the rules in the strictest sense. In such view of the matter and in the event of the 4th respondent committing a breach of any of the terms of the Rules, it was left open to the parties to approach the Pollution Control Board.

With the direction that the order shall be communicated to all the authorities concerned for the purpose of a better understanding of the implications of the Rules, the application was closed.

S. Palanichamy
v.
The State of Tamil Nadu & Ors
Application No. 171/2015 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: Saw Mill, Consent, Air Pollution, Noise Pollution
Decision: Dismissed
Date: 17 November, 2016

JUDGMENT

This application was filed for closure of a saw mill run by Respondent No. 12 contending that the industry did not have Consent to operate from the Pollution Control Board and therefore, was not entitled to continue the operation.

The Board contended that the unit in question did not have valid consent from the Board and was operating without adequate air and noise pollution control measures. Later, the respondent unit contended that it had stopped all production activity and undertook to start operation only after obtaining valid consent from the Board and would provide adequate APC measures. The unit also admitted that they erected a small Timber mill for which they obtained the license from the Forest Department but the same did not require any consent from the Pollution Control Board. However, in reply to a show cause notice issued by the Board, the respondent unit stated that it will not operate till a valid consent was obtained.

The Board submitted that a closure order had already been issued to the respondent unit on 16.11.2016. The respondent unit sought liberty to challenge the closure order however the Tribunal stated that no such liberty was necessary and if an application for consent was made, the Board had to dispose the same in accordance with law.

It was also pointed out that many Saw Mill industries were being operated without consent and no action had been taken for the same. It was stated that if industries were being operated without consent then necessary action was required to be taken. The

Board was also directed to issue guidelines with regard to the same, without any further delay.

Accordingly, the application was disposed of.

V. Ravindran
Vs.
Member Secretary, Tamil Nadu State Pollution Control Board & Ors.
Application No. 55/2016 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Manufacturing of kitchen equipment, Siting,
Decision: Disposed
Date: 17th November 2016

JUDGMENT

This application was filed seeking a direction for the respondents namely, Sri Murugan Kitchen Equipments, S. Balakrishnan and K. Anbalagan to close down the offending manufacturing activity of modern kitchen equipment at a residential area and shift to a place approved by respondents namely, the Director, Tamil Nadu Town and Country Planning Board and the Commissioner, Tiruchirappalli City Municipal Corporation for such industrial activity. The other relief sought was to disconnect the High Tension power supply granted to the said building, as it could not be permitted in the residential area.

The respondents submitted that the respondent tenants who were running the building had already surrendered the tenancy right and vacated the building, and the same was re-possessed by the respondent landlord namely, M.S. Ramamoorthy. The Tribunal stated that the question of whether the industry could run in an industrial area was not to be decided by the Tribunal, especially when no industry was running at present.

In view of the closure of the manufacturing activity, nothing survived the application and accordingly, it was disposed of.

Ms. Veera Sivaji Padippakam and Sports Club
Vs.
The District Collector, Nagercoil & Ors.
Application No.65/2016 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Encroachment, Leakage, Garbage, Water Pollution
Decision: Disposed
Date: 17th November 2016

JUDGMENT

This application was filed against the respondents seeking reliefs, which included removal of encroachments around the Madathukulam Pond and issuance of directions to the respondents to maintain the pond by carrying out the repaid work to arrest or stop the leakage of water based on the applicant's representation. The applicant contended that apart from encroachment on the pond, there was also leakage of water from the said pond and garbage was also being dumped, thereby making the pond useless.

The BDO, Melpuram Panchayat denied the applicant's submission related to the encroachment, whilst admitting that there was some leakage of water, for which steps had been taken to repair the shutter of the pond. It was also stated that the pond was being maintained periodically by de-silting and deepening.

According to the Tribunal, the applicant had not pointed out any specific case of encroachment but directions were nonetheless issued to the respondent to remove any, in the pond. The submissions of the respondent were recorded and no further direction was found necessary in the application.

Therefore, the application was disposed of, with no order as to costs.

Meeava Thanthai K.R. Selvaraj Kumar
Vs.
State of Tamil Nadu & Ors

Application No. 119/2016 (SZ)

Coram: Hon'ble Justice MS Nambiar, Shri P.S. Rao
Keywords: Untreated Effluent, Fertilizer, Environmental Pollution
Decision: Dismissed
Date: 18 November 2016

JUDGMENT

This application was filed under section 14 of the NGT Act wherein the applicant prayed for a direction with regard to respondents 1-7, the State of Tamil Nadu, the District Collector and the State Pollution Control Board to initiate necessary actions against respondents 8 and 9 for activities involving disposing untreated effluent into the sea and polluting the water resources. According to the applicant, respondent 8, a fertilizer industry, was a manufacturer of Ammonium Phosphate Sulphate, which caused environmental pollution due to the same being transported in large quantities in ships, without taking essential security measures.

After this application was admitted, the Central Pollution Control Board was directed to inspect the respondent's manufacturing unit and in its report, it was revealed that the industry had not been discharging any untreated effluent into the sea and was instead, doing so by satisfying all the prescribed parameters which included separate storage places to store raw materials, storage of Sulphur in concrete platforms, import of ammonia only once a month, recycling of the waste water and so forth. Based on this report, suggestive measures were recommended which included improvement of overall housekeeping of Sulphur storage yards, proper intimation to the State Pollution Control Board during unloading activity of the ammonia from the ship mooring point to the storage tank, adaptation of advanced technology for Leak Detection and Repair programme in ammonia pipeline, installation of flow meters in process areas, maintenance of proper records on quantity and quality of water received from discharge

channels, provision of proper floaters and marine outfall points and disposal of Sulphur slag as per HWM Rules.

With regard to the relief sought against respondent 9, that is, the Tamil Nadu Maritime Board, there was no allegation against the said respondent and had nothing to do with the running of the 8th respondent's industry. Further, the 8th respondent confirmed compliance to the recommendations of the Board and considering that no pollution had been caused as per the applicant's allegation, the application was dismissed with no order as to costs.

Kashinath Jairam Shetye & Ors.
Vs.
Anil Arora & Ors.

Appeal No. 26/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Multiple Litigation, Limitation
Decision: Dismissed
Date: 18th November 2016

JUDGMENT

This appeal was filed seeking a prayer to quash impugned order issued on 8th September, 2015 by the Member Secretary, GCZMA wherein the complaint proceedings initiated by one of the appellants alleging illegal construction and violation of CRZ Notification by respondent No. 1 in Bardez, Goa, was closed by the authority without due investigation of the matter.

The main contention of the appellant was that the order had been issued by the Member Secretary of GCZMA without any approval by the GCZMA Authority and that it is only the authority who could take a decision to either issue directions under Section 5 of the Environment (Protection) Act or not and therefore, the impugned order was passed without any authority of law.

In reply to the appeal, the respondent No. 1 contended that the appellants had initiated simultaneous proceedings before the Tribunal through Application No. 87/2015. Under the mentioned proceeding, the Tribunal had given time to the appellants to move an application for amendment to initiate challenge to the order passed by the GCZMA but the appellants had indulged in multiple litigations by filing affidavit and not application while separately instituting the present appeal.

The Tribunal referred to Rule 14 of the NGT Rules 2011 according to which the appellants cannot be allowed to institute multiple proceedings as it will defeat the basic principle of judicial discipline and propriety. Further, the Tribunal opined that the current appeal was

filed well beyond the prescribed period of limitation under Section 16 of the NGT Act which meant that the appeal was barred by limitation and also could not be entertained in view of simultaneous proceedings initiated against the same impugned order which was the cause of action in both the proceedings.

Accordingly, the appeal was dismissed with no order as to costs.

Kashinath Jairam Shetye & Ors.
Vs.
Anil Arora & Ors.
Application No. 87/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Construction, Coastal Regulation Zone
Decision: Dismissed
Date: 18th November 2016

JUDGMENT

The application was filed against alleged violation of Coastal Regulation Zone ('CRZ') Notification by the private respondent. It was the case of the applicant that the respondent had constructed a new building in the No Development Zone area of CRZ-III without taking necessary permission from the authorities.

In response to the application, the private respondent submitted that Goa Coastal Zone Management Authority ('GCZMA') was the statutory authority for implementation of CRZ notification and GCZMA had already initiated action against the respondent based on the complaint received from the applicants. It was contended by the respondent that when an action was already initiated by the statutory authority, the application could not be entertained by the Tribunal. It was also submitted that the GCZMA had issued a show cause notice/stop work order on 23.07.2015 and after necessary inquiry GCZMA had informed one of the applicants that based on the inspection and documents, the complaint could not be preceded against the said respondent. This communication was brought to the notice of the Tribunal on 10.10.2015 and the same was made available to the applicants. The Tribunal expressed that as the decision was taken by GCZMA, the same could be challenged under the appellate provisions of the National Green Tribunal Act 2010 and not under the present application. The applicants sought time for moving the application but instead filed an affidavit which was not in terms of rules and procedures of the Tribunal.

The Tribunal noted that in spite of the liberty given to the applicants to challenge the decision of GCZMA, they failed to change the present application to appeal and chose to file only affidavit. Thus

the Tribunal did not delve into the intricacies of the present application and held that the cause of action as portrayed by the applicants did not survive.

Accordingly, the application was dismissed with no order as to costs.

Shafi Mohamed Meer
Vs.
State of Maharashtra & Ors.
Application No. 25/2014

AND

New Link Road Residents Forum
Vs.
Union of India & Ors.
Application No.32/2014 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Air Pollution, Noise Pollution, Emission standards, Cause of Action
Decision: Dismissed
Date: 18th November 2016

JUDGMENT:

By this common judgment, both these applications were disposed as they dealt with the same issue of restraining the induction of two-stroke three-wheelers i.e. auto rickshaws. Application No. 25/2014 was filed by the founder of Jagrut Auto-Rickshaw Men's Union and a labor right activist. The Applicant submitted that the Government had misled the public that CNG fuel was non-polluting while encouraging large scale conversion of auto-rickshaw to CNG. He contended that despite having CNG, pollution levels were on the rise and he was aggrieved by the fact that the Govt. was declaring CNG as non-polluting and then compelling PUC Certificate to be taken which was an economical exploitation of auto-rickshaw owners. In support of his contention, the applicant relied on report no. 9 of Environment Protection and Control Authority (EPCA), 2004 wherein the authority had found that auto rickshaws were contributing to pollution load in the city despite running on clean fuel. The applicants contended that increase in number of auto-rickshaws had also resulted in significant increase in the noise pollution and also stated that with the proposed additional auto rickshaws on the road the livelihood would be

more complicated for the present auto-rickshaw driver. Therefore, he prayed for directions to issue a stay order against the sanction of new auto rickshaw permits, to direct appropriate assessment of impact on air and noise levels due to auto rickshaw like other vehicles, to withdraw new permits and to introduce effective regulatory and enforcement mechanism to ensure less pollution. By way of other application no. 32/2014 the applicant, an NGO called Link Road Residents Forum, invoked the jurisdiction of this Tribunal to prevent further damage to the environment on account of the government's aforementioned decision to issue a total of 69309 fresh permits for auto rickshaws in the State of Maharashtra. The main contention raised in this application was that two-stroke engines in auto rickshaws were inferior to four-stroke engines as far as exhaust air emissions were concerned. Accordingly, the applicant pleaded that it was imperative on the part of Government of Maharashtra to take necessary steps in consultation with Maharashtra Pollution Control Board (MPCB) to prohibit induction of two-stroke engine auto rickshaws in order to improve air quality.

Countering these applications, Transport Commissioner, State of Maharashtra submitted that the Transport Authority had resolved to allow only new auto-rickshaws to be used on permits and it was mandatory to register the vehicle on CNG as it was a cleaner fuel. The Commissioner further relied on Notification No. GSI-443/(E) issued by Government of India on 21/05/2010 and submitted that the BS-III norms were made applicable for two-wheelers and three-wheelers in the cities of Mumbai, Pune and Solapur from 01/10/2010. The Transport department contended that the said notification does not bar registration of two-stroke auto rickshaws in the said cities provided that they complied with BS-III emission norms. It was further submitted that all registered auto rickshaws were approved by Testing Agencies in compliance with provisions of the Motor Vehicles Act, 1988. It was further submitted that the Central Govt. vide order dated 26/11/1997 had directed the Transport Department to limit number of auto rickshaws in Mumbai to then existing total number of permits and accordingly the present allotment by way of lottery was in respect of those permits which were cancelled/revoked by the authorities and there were no new additional permits more than that which were in existence as on 26/11/1997. MPCB filed a report of Automotive Research Association of India in which it was concluded that particulate emission from all new vehicles i.e. two stroke and four stroke were within diesel limit value and that particulate emission from old two stroke vehicles was more than four stroke vehicles within the analyzed sample data set. Respondent No. 8, a Union representing interest of auto rickshaw owners and drivers, contended that the reliefs sought were beyond the mandate and jurisdiction of the Tribunal and as long as prescribed emission norms were complied by the auto rickshaws, the Tribunal should not do a preferential treatment to a particular type of engine.

Based on the contentions, the Tribunal framed two issues for adjudication. First, whether the applications justify any cause of action in terms of the provisions of S.14 and second whether the Tribunal could consider the prayers in the application related to resisting particular technology and prescribing another one in order to improve air quality.

While dealing with the issues, the Tribunal noted that preliminary prayer in both these applications were related to restricting the induction of new two stroke auto rickshaws to existing fleet or replacement of existing fleet and the conspicuous cause of action arose when the Transport department invited applications for grant of permission for new auto-rickshaws. The Tribunal noted that to invoke the jurisdiction under Section 14 of the National Green Tribunal Act, a dispute which was related to cause of environment needed to be presented by the Applicant. The Tribunal opined that the applications were based on the apprehension that two-stroke engines were major contributors to ambient air quality pollution. However, the Tribunal noted that no capacity addition to the number of auto rickshaws was envisaged by the Transport Department and the replaced fleet of three-wheelers was to comply with BS-III standards irrespective of the type of engine. Further, the Tribunal was of the belief that if the main prayer was related to ambient air quality then the applicants should have brought all or at least majority of sources within the proceeding instead of a small segment of automobiles. Therefore, the Tribunal opined that the present applications were related to banning of two stroke engines and the same could not be covered under Section 14. The Tribunal reasoned that when emissions from vehicles were in compliance with emission standards, it would not be prudent for the Tribunal to prescribe any technology which may lead to creation of third party rights. In view of the same, the Tribunal did not entertain these applications due to lack of cause of action but in the interest of justice, it directed the MPCB to consider the engine emission levels for different fuels and send its recommendation to the Government.

Accordingly, the applications were disposed of with no order as to costs

Manickkampudur Common Effluent Treatment Plant Pvt. Ltd.
v.
Tamil Nadu Pollution Control Board
Application No. 258/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Common Effluent Treatment Plant, Consent
Decision: Disposed
Date: 21 November, 2016

JUDGMENT

This application was filed by the owner of a Common Effluent Treatment Plant ('CETP') in Tiruppur Taluk, having a membership of 10 bleaching and dyeing units, which had to be shut down pursuant to an order passed by the Madras High Court, due to reasons of non-raising of project costs for the installation of an RO plant. However, after obtaining permission from M/s. IL & FS Urban Infrastructure, the applicant filed a writ petition praying for a direction to reopen the member units.

In the mean time, 17 CETPs were imposed with a fine, which was challenged by the Dyer's Association in the Supreme Court, following which an interim order allowed the units to run. When the original writ petition was transferred as an application to the Tribunal, the applicants requested for permission to run the washing units, promising that no pollution would be caused by such activities. This application was disposed off, rejecting the same but the applicants were permitted to make a necessary application to the Board for permission to run the units for washing purposes only.

Considering the large amount of investment in the project, the applicant had completed all the formalities for the same, as per the Scheme framed by the Central Government and had submitted a Detailed Project Report for the upgradation of CETP. The State Pollution Control Board ('Board') was asked to assess the requirement of the funds for installing a ZLD system but the applicant was informed that disbursement of loan would be delayed as only 40% of the work had been completed and was informed that such loan would be disburse only after the Board issued Consent to the unit.

When the applicant approached the Board for Consent, it was refused on the basis that the applicant had not paid the amount fixed by the Loss of Ecology Authority as per the interim order. The High Court, in its final order, had issued certain directions to the CETP to achieve ZLD, one of which was to deposit a sum of up to 22 crore and a further amount of up to 24 crore, in two installments. The applicant submitted that a sum of around Rs.5 crore had been deposited and that there was no requirement to pay the remaining 18 crore but the Board refuted, stating that unless the amount was paid in full, the Board could not consider the application for Consent to Operate.

The applicant submitted that it was willing to pay the amount but was in no position to do so due to the non-obtaining of the loan, the disbursement of which would only be possible if Consent to Operate was granted by the Board. Therefore, the Tribunal passed a certain conditional order in order to render substantial justice. The application was subsequently disposed with directions to the applicant to pay 50% amount due within 4 weeks from the date of the order and on such payment and proof of such payment, the applicant would be entitled to make an application to the Board. Moreover, in such an event, the Board, after verification of the amount and perusal of the application, should grant consent to the applicant, subject to the condition that the application would pay the remaining amount within 3 months from the date of obtaining the loan and violation of such condition would permit the Board to stop the functioning of the unit.

With the above directions, the application was closed.

Babu Appun
v.
Chief Secretary to Government of Tamil Nadu & Ors
Application No. 189/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Solid Waste Disposal, Environment Clearance
Decision: Disposed
Date:21 November, 2016

JUDGMENT

This application was filed to restrain the Commissioner of the Vellore Municipal Corporation ('Corporation') from dumping municipal rubbish in certain areas at the Sathuperri Village and to direct the respondents to remove the debris and solid waste which had been dumped in the village over the past few years and take immediate action to protect the health of the people in the village and surrounding areas.

During the pendency of this application, the Tribunal had passed orders, noting the submissions made by the Corporation for authorization for erecting 42 sheds for segregation of waste under the Municipal Solid Waste Management Rules and for a new landfill site for disposal of Municipal Solid Waste. The Tribunal noted the identification of alternative sites for such treatment of waste and the steps taken by the Commissioner for remediation.

Certain directions were issued to the Corporation to supply water to villages in the disputed jurisdiction, which had been affected by the unlawful dumping. However, it was found that the President of the village was in fact obstructing the water supply. The Tribunal recorded that the 42 sheds were erected for the purpose of segregation of biodegradable and non-biodegradable wastes and directed to send only non-biodegradable wastes to the dumping yard. Directions were given to the State Pollution

Control Board ('Board') to inspect the sheds, out of which only 36 were approved by the Board for granting authorization.

It was submitted that 26 cubicles had been erected in the 36 sheds for converting biodegradable waste into manure and was to be continued till an alternate place was identified. Therefore, the Tribunal issued directions to the Board to make periodical inspections and be satisfied of the functioning of the sheds.

With regard to the compost yard proposed to be built, the project was to be commenced within a period of 4 months, with a compound wall already erected. The respondent submitted that the Corporation would proceed with the activities in the next year after obtaining Environment Clearance ('EC') and authorization from the Board. In respect of the alternative place, the Commissioner of Land Administration was required to pass appropriate orders to enable the Corporation to proceed with the work of establishing a Solid Waste Disposal Facility Centre. The Tribunal was of the view that such an approach was encouraged and should be commenced immediately.

In view of the above circumstances, the Tribunal directed the Commissioner of Land Administration to grant necessary approval within 2 weeks from the date of the order. With regard to the water supply to the people living in the affected villages, the Tribunal believed that it was the paramount duty of the Vellore Municipal Corporation to supply potable water to the residents of the village under Article 21 of the Constitution and if any person was found to be violating the same, civil and criminal action would be taken against the person. In order to ensure immediate water supply, the Corporation was directed to supply drinking water through water tankers with assistance from the Revenue Department.

With the above directions, the application was closed. Directions were also given to the Corporation to file a compliance report once in 3 months with the Registry indicating the progress of the various works executed for the disposal of solid waste, for the next 2 years.

V.Maruthaiyan
Vs.
Union of India & Ors.
Application No. 30/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Riverbed, Tree felling
Decision: Dismissed
Date: 21st November 2016

JUDGMENT

This application was filed to restrain the official respondents namely the Public Works Department and the Environment & Forest Department of the Government of Tamil Nadu, Chairman of Tamil Nadu Pollution Control Board and the District Collector of Thanjavur Division from cutting trees on the riverbed of the Cauvery River and to direct them to preserve trees. Initially, the Tribunal had passed an interim injunction restraining the PWD from cutting and felling of trees along the riverbed and it was not in dispute that after the order was passed, there had not been any cutting of trees.

The PWD submitted that the officials were not interested in cutting any tree in the disputed area and the District Forest Officer further affirmed that the Forest Department had no intention to remove the standing trees on the river bank and the road margin. If any trees were to be removed, they would require permission from the Highways Department.

In view of the above statement, the application was closed with a direction to the official respondents to not cut any trees except by following due process of law.

S. Venkatesh
v.
Union of India & Ors
Application No. 143/2015 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: EIA, CRZ, Road Expansion
Decision: Dismissed
Date: 21 November, 2016

JUDGMENT

This application was filed alleging that the widening of the East Coast Road running from Chennai to Kanyakumari was done without any proper study or scrutiny and that it would have immense adverse impact on the coastal ecosystems such as tremendous rise in air and sound pollution, impact on the groundwater and adverse pressure on the ecosystem including damage to the Olive Ridley Turtles. Therefore, the applicants prayed for directions to not widen the road, to demolish the illegally widened road and restore it to conform to the EC issued by the MoEFCC in 1994. It was argued that the widening was being undertaken in violation of the provisions of the CRZ Notification, 2011 and EIA Notification, 2006. The applicant also alleged that CZMA appraised the project without considering that the impugned construction was within the CRZ-I area which was impermissible as per the CRZ Notification, 2011. It was also alleged that the approval was provided by CZMA and not SEIAA/MoEFCC which was the competent authority to grant clearance under the CRZ Notification, 2011.

The MoEFCC submitted that in view of the amendment in 2009 to Item 7 (f) of the Schedule to the EIA Notification, 2006, no EC was required for the project. The 3rd Respondent TN CZMA submitted that the construction was permitted to benefit the inhabitants and to avoid traffic congestion and accidents. The points that arose for consideration in the present case were whether the widening of the road required EC under the EIA Notification, 2006 and also required clearance under the CRZ Notification,

2011, and as to whether the widened portion of the road was required to be demolished as argued by the applicant.

The Tribunal noted that while the expansion of State Highways was covered under the 1994 EIA Notification, the same was amended later on 1.12.2009 to only cover those projects which were undertaken in hilly terrain or ecologically sensitive areas. The Tribunal noted that the road which was earlier treated as the "other district road" was subsequently changed to State Highway vide GO dated 16.12.2003 issued by the State of Tamil Nadu. The Tribunal found that the project was covered under CRZ I-B and not CRZ I-A as was argued by the applicant. It further stated that there was no such notification under the Environment (Protection) Act, 1986 declaring the said area as ecologically sensitive. The Tribunal found that the project did not require EC as neither the same was found in hilly terrain nor in an ecologically sensitive area to satisfy the requirement under the EIA Notification, 2006.

The Tribunal while determining the second question with respect to CRZ clearance, observed that as per the CRZ 2011, the project proponent had applied to the TNCZMA for widening of the existing ECR. Since the construction of roads and bridges is a permissible activity and improvement of an existing road also is not prohibited under the said regulations, the Member Secretary, CZMA approved the road expansion based on certain conditions. The Tribunal though acknowledged the contention of the applicant that the CZMA only gives recommendation to the SEIAA/MoEFCC which based on the same grants clearance, however the Tribunal also noted that the clearance was provided by the Member Secretary, CZMA who then also headed the SEIAA. Thus, though there was difference in his professional capacity, yet for that fault, the project could not be faulted with. The Tribunal also did not observe any environmental damage or violation of the provisions of the CRZ, 2011 and thus, did not find it a fit case to interfere with the CRZ approval given by the TN CZMA.

The reliefs claimed by the applicant were dismissed with directions to the respondents to plant trees along the road, to plant shrubs in the centre median, to provide noise barriers in appropriate locations and to erect water harvesting structures along the road. Accordingly, the application was disposed of.

U.S. Palanivel
v.
Chief Secretary to Government of Chennai & Ors.
Application No. 151/2015 (SZ)

Coram: Hon'ble Justice M. S. Nambiar, Hon'ble Shri P. S Rao
Keywords: Illegal Construction, Water Body, Encroachment
Decision: Dismissed
Date: 21 November, 2016

JUDGMENT

The application prayed for a direction to remove the debris from Kambathiyan Koil Kulam or Kambathu Viran Tank, a water body that was filled for construction of a park. It was stated by the applicant that the pond/tank stored rain water which was used throughout the year including irrigation. The applicant alleged that the said tank was illegally encroached upon for the past 40 years reducing the width of the water body and a tank with concrete walls was built inside the water body by the Government. Against, the same the applicant approached the High Court of Madras in a writ petition which was disposed of with the direction to consider the representation of the applicant and take appropriate action. The applicant then filed a Contempt Application against the District Collector for non compliance of the above passed Orders and non eviction of the encroachers. Pursuant to which the 2nd Respondent District Collector evicted 59 out of 79 houses from the encroached area.

The 2nd Respondent replied that Kambathiyan Koil Kulam was classified as "Poramboke Kulam" in revenue records. It was also stated that 59 encroachers had been evicted; meanwhile the applicant had filed the said Contempt Application in which the High Court had accepted the case of the respondents and closed the petition. Further, the Government of Tamil Nadu sanctioned the work of "Eco restoration and Rehabilitation of Kambatheeswaran Kulam of Punjai Kalamangalam Village Erode district" under which the District Collector accorded administrative sanction to the Block Development Officer

(BDO), the 3rd Respondent for deepening and Eco restoration of the pond, construction of retaining wall, Laying of Paver Block and creating other amenities like Kids Park etc. against which the present application was filed. The process and progress of the work intended to increase the water holding capacity of the Pond, to protect ground water table of adjacent villages, to strengthen the bund and to prevent encroachment were also stated.

The 3rd Respondent reiterated the response of the 2nd Respondent and emphasized that the park was being built outside the retaining walls of the pond and the intention behind the work was to beautify the pond and protect it from encroachment.

The Tribunal took note of the applications filed by the applicant in the High Court and stated that the applicant could approach the High Court for eviction of the remaining encroachers, for the relief sought in this application was only in regard to removal of debris from the pond filled there for the construction of park and for desiltation and remediation of the tank.

The 3rd Respondent filed an affidavit clarifying that the retaining wall was built on the edge of the water holding area and not on the tank; also it had helped with water management and was quite a common measure used in protection of water bodies. Further, the idea of construction of a park had been dismissed.

Accordingly, the applicant was not entitled to relief sought and the application was disposed of with the directions to further deepen the water body and increase its water holding capacity so the water may be stored throughout the year and the water table in the area be refreshed based on certain parameters, if necessary; regular maintenance of drains/ channels/ nalas to ensure water supply into the tank; and to take necessary measures to protect the tank from littering and polluting, laying emphasis on the importance of preserving and improving the Tank.

S.Joel
v.
Secretary to Government of India,
Department of Environment and Forest & Ors.
Application No.72/2015 (SZ)

Coram: Hon'ble Justice Dr.P. Jyothimani, Hon'ble Shri P.S.Rao
Keywords: Desilting, EC
Decision: Dismissed as Infructuous
Date: 22 November, 2016

JUDGMENT

This application prayed for direction to the MoEFCC and Department of Mines to grant Environmental Clearance for desilting Srivaikuntam Dam situated in Srivaikuntam Taluk and to the State Respondents to commence the desilting project immediately upon receiving the said EC and complete it before September- October, 2015.

The Tribunal noted that the provisions for question of requirement of EC for activities like desilting did not exist under EIA Notification, 2006 at the time of filing of the application but by an amendment dated 15.01.2016 it was established that the said activity did not require a prior EC. Accordingly, the application was closed as infructuous as no relief was required to be granted by virtue of the said amendment.

Hindustan Engineering and Industries Limited & Ors.
V/s.
Gujarat Pollution Control Board & Ors.

Appeal No.35/2016 (WZ)

Coram: Hon'ble Dr. Justice Jawad Rahim, Hon'ble Dr. Ajay A.Deshpande
Keywords: Closure Order, Principles of Natural Justice
Decision: Allowed
Date: 22nd November, 2016

JUDGMENT

This appeal was filed by the appellant industry against the direction of closure issued by the Gujarat Pollution Control Board(GPCB) under section 33A of the Water (Prevention and Control of Pollution) Act, 1974. The appellant industry which is a chemical industry manufacturing and marketing various chemical products, contended that the closure order was issued without following the Principle of Natural Justice since the same was issued without giving any show cause notice or personal hearing to the appellant which is the mandatory requirement under the Act. Further, the closure order did not specify the alleged damage to environment which led to the direction of closure by the respondent authority. The appellant brought to the notice of the Tribunal that a similar closure order was issued by the respondent authority previously which was challenged by the appellant in Appeal No. 27/2015. The said closure order was set aside with observations by the Tribunal that the appellant was not given a personal hearing and neither the closure order was communicated. The appellant submitted that despite their industry had complied with the terms and conditions imposed by the Tribunal, the impugned closure order has been issued for no reason.

The Tribunal recorded that the order was issued without complying with the procedural requirements of Rule 34(3) of the Water (Prevention and Control of Pollution) Rules, 1975 and therefore stayed the same. However, while the matter was sub-judice, the

respondent revoked the closure order pleading that the appeal be now treated as infructuous.

Considering the conduct of the respondent authority and the pleadings in the instant matter, the tribunal observed that the GPCB being a statutory authority was required to strictly follow the procedures as mandated under the Act. It further stated that the power to direct closure is a special power bestowed upon the authority in order to protect the environment and the same cannot be exercised arbitrarily or in violation of the prescribed procedure.

Considering the principles laid down by the Hon'ble Supreme Court in Maharashtra Land Development Corporation & Ors Vs. State of Maharashtra & Anr**.** regarding the proportionality of administrative action, the Tribunal held the action of the Board as arbitary, illegal and abuse of discretionary power and quashed the impugned order. While issuing strict caution to the respondent to ensure that its conduct and decisions should not conflict with rule of law and the erring members are forbidden to indulge in such acts, the Tribunal imposed a cost of Rs. 5 lakhs to be used for environmental improvement in and around GIDC Industrial Estate, Olpad, Surat. Accordingly, the appeal was allowed.

Mr. Francis Misquita
Vs.
Goa Coastal Zone Management Authority & Anr.

Appeal No. 94/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Natural Justice, Delegated Authority, Application of mind, Coastal Regulation Zone
Decision: Allowed
Date: 22nd November 2016

JUDGMENT

This appeal was filed challenging the order issued by the Member Secretary of the Goa Coastal Zone Management Authority ('GCZMA') by virtue of the powers available to it under Section 5 of the Environment (Protection) Act, 1986. It was the case of the appellant that he and the Respondent No. 2 were real brothers and had a serious family dispute regarding ancestral property due to which the respondent no. 2 had filed complaints against him with various authorities including GCZMA alleging illegal construction undertaken by the appellant. The main grievance of the appellant was that the GCZMA had issued a show cause notice without carrying out any investigation regarding the allegations made by the respondent No. 2 and when he sought information under RTI from the GCZMA regarding the status of his property for ascertaining whether such allegation could be entertained, the GCZMA declined to give such information on the basis that the information sought was in the nature of opinion. Subsequently, the GCZMA forwarded the respondent's complaint to the Deputy Collector who had initiated an enquiry which was still pending.

In his reply to the show cause notice, the appellant claimed that the structures in question were pre-1991 and had been prepared in compliance to the directions given by the High

Court of Bombay at Goa in Suo moto Writ Petition No. 2 of 2006, which was the most authentic record of the existence of impugned structures prior to 1991. Further, the appellant submitted that the GCZMA had issued final directions of demolition without verification of such documents and without being given any opportunity or personal hearing, which went against the principles of natural justice. Finally, the appellant also contended that the Member Secretary, who had issued such orders, was not legally competent and authorized to issue such directions on his own.

In its reply, the GCZMA stated that the appellant failed to take necessary steps to file his reply to the show cause and that there was no infirmity or irregularity in the final directions as it was a procedure formality, which was dependent on compliance of the show cause.

After hearing both sides, the Tribunal observed that the impugned order had been issued in a mechanical manner, without independent assessment of the alleged violations and only on the premise that the show cause notice had not been replied to. The Tribunal stated that what was required instead was independent verification and investigation by the authorities and proper application of mind regardless of whether or not the reply had been filed. Thus, the Tribunal agreed with the contention of the appellant and was of the opinion that the impugned order could not be sustained due to violation of the principle of natural justice, lack of application of mind and absence of the authority with the Member Secretary to issue such directions and therefore, the order was quashed and set aside. It gave directions to the Chairperson of GCZMA to take notice of this lapse and take action within the next month to ensure fair play and judicious approach.

Accordingly, the appeal was allowed and the GCZMA was directed to pay cof Rs. 10,000/- to the appellant as costs.

Prafulla Samantray
Vs.
Union of India & Ors

MA No. 333/2016 in Appeal No. 01/2016 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Environmental Clearance, Condonation for Delay
Decision: Allowed
Date: 23 November 2016

JUDGMENT

This application was moved by the applicant for condonation of delay in filing of the abovementioned appeal wherein an Environment Clearance granted by the MoEF &CC was assailed by the applicant. The application was filed taking recourse of the provision of section 16 which provides for condonation of delay in filing of appeals in cases the same are filed beyond a period of thirty days and not beyond 90 days from the date of communication of the EC order if sufficient cause for not filing the appeal within the prescribed period of 30 days is shown by the applicant/appellant.

The contention of the applicant in the present case was that though the EC was granted on 20.11.2015, the contents of the same came to his knowledge only on 04.02.2016 through a reply received in response to an application under the RTI Act, 2010. Consequently, the application came to be filed on 18.02.2016 which as per the applicant was within the period of thirty days if the same was computed from 04.02.2016, i.e., the date on which the applicant became aware of the contents of the EC. The applicant further submitted that though he became aware about the grant of EC through a local newspaper on 06.01.2018 but neither the same contained the details of the EC nor the same was made available by the MoEF& CC on its website. He therefore stated that the appeal was within the limitation period computed from 04.02.2016.

The Respondents strongly contested this application, arguing that the EC received by them was duly uploaded on the company website on 20th November 2015 and that they had taken all measures within a limited time period to publish it in local newspapers, evidencing the replies of the newspapers confirming the same. They also argued that all the claims of the applicant were entirely false and presented a letter dated 17 September 2014, written to the MoEF&CC by the applicant requesting it not to consider the application for EC presented by the Respondent company which indicated that the applicant was indeed well aware of the matter pertaining to the EC.

For the purposes of the deciding this application, the Tribunal perused the main prayer made in the appeal which sought quashing of EC and therefore observed that for the purposes of challenging the EC, the contents of the same are required to be within the knowledge of the appellant/applicant. After going through the pleadings, the Tribunal accepted the contentions of the applicant that the EC was not communicated to public at large as stipulated under the EIA Notification, 2006 and it was only on 04.02.2016 when the contents of the same came to the knowledge of the applicant. Further, it rejected the submissions made by the respondent that the EC was in public domain since neither the website of the company nor the newspapers contained the EC details which did not fulfill procedure stipulated under the relevant law.

The Tribunal, therefore, allowed this application and condoned the delay holding that from the date when the applicant came to know about the details of the EC, the application was made within the prescribed time period given in the NGT Act,2010.

Mathala Chandrapati Rao
v.
Member Secretary, Odisha State Pollution Control Board & Ors
Appeal No. 97 of 2013 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Stone crusher, Consent, Air Pollution, Health hazards, Compensation
Decision: Allowed
Date: 23 November, 2016

JUDGMENT

The appellant/applicant, a resident of village Kidigam in Odisha, had approached the Appellate Authority against the grant of Consent to Establish by the Pollution Control Board for setting up of stone crusher unit, asphalt mix and wet mix units operated by the Respondent No.4. Since the grant of consents were upheld by the appellate authority, the applicant challenged the said order in appeal before the Tribunal also seeking compensation for the victims of environmental pollution and damage caused by the said unit. Since during the proceedings of the matter, the consent of the Respondent No. 4 got terminated, the Tribunal only restricted its hearing to the issue of compensation thus, treating the application under Section 15 of the NGT Act, 2010. The appeal/application was found well within the prescribed period of limitation under section 15 (3) of the NGT Act and was therefore entertained.

The applicant submitted that the effect of the stone crusher's damage to the environment could be seen in the form of fall in agricultural and horticultural produce and increase in respiratory diseases in the concerned area. The case of the applicant was that the respondent unit had violated the conditions of the consent which included construction of wind breaking wall and metalled road, development of thick green belt along the periphery of the unit and plantation of indigenous species and finally, land conversion from agricultural to industrial purposes. The said respondent in reply stated that none of the allegations relating to damage to the crops and plantations were found to be true and that the Board was well aware of all the pollution control measures adopted by the unit

as well as compliance to all terms and conditions of the 2010 consent order, finding no legal ground in the applicant's claim. They further stated that the boundary wall around the unit was wiped out by a cyclone named Phailin.

The Tribunal relied upon various scientific studies to determine the environmental effects of stone crushers which showed that if adequate pollution control measures are not taken, the fugitive emissions of the stone crusher units are bound to cause adverse effects on plants, human health and the surroundings. Therefore, the question arose as to whether there was a failure on the part of the Respondent No.4 to take adequate pollution control measures whilst operating the said stone crusher. The Tribunal considered the steep increase in respiratory diseases in 25 people of the nearby village, which came down once the operation of the unit had stopped in 2014. Considering that the unit had been operating in the open, without a boundary wall or a wind breaking wall, the Tribunal directed the respondent to deposit Rs. 2 lakhs before the Pollution Control board. The Tribunal also concluded that the pollution had indeed been caused by the said units in the said locality. In order to determine the question of "polluter pays principle", the court considered the Supreme Court decisions in Indian Council for Enviro-Legal Action v UOI and Vellore Citizens Welfare Forum vs. UOI, and applied the principle of strict liability, directing the said Respondent No. 4 to pay damages for the pollution caused. It was also discovered that the cyclone had no effect on the stone crusher unit, after which, considering the extent of damages caused to the health of local villagers and the applicant's struggle to seek justice, the Tribunal directed the said respondent unit to pay compensation worth Rs. 5,00,000 to the Collector of the District within 30 days of the order, to be used towards the upgradation of the local community health center. The Respondent No.4 was also directed to pay Rs.2,00,000 as litigation costs to the applicant.

Accordingly, the application was disposed of.

Royal Blue Hotels Pvt. Ltd.
v.
Kerala State Council for Science Technology and Environment & Ors
Application No. 285/2014 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Coastal Regulation Zone, Illegal Construction
Decision: Dismissed
Date: 24 November, 2016

JUDGMENT

This application was filed to set aside a notice dated 28.10.2014 issued by the Kadinamkulam Gram Panchayat issuing show cause to the applicant under the Kerala Panchayat Raj Act, 1994 after recording the unauthorized constructions being made without obtaining building permit, making it liable to be demolished under the same act. The application further sought preparation of the Coastal Zone Management Plan as contemplated under Clause 5 of the Coastal Regulation Zone Notification 2011 classifying the areas under the disputed Panchayat as CRZ-II. However, the said prayer was not pressed by the applicant.

The applicant argued that as the order passed by the Panchayat under the said Act cannot be assailed before the Tribunal since the same is not mentioned under the Schedule to the NGT Act, 2010, similarly, an order for demolition on the ground of violation of the CRZ provisions could not be passed by the Panchayat and the same could only be passed by the Kerala Coastal Zone Management Authority. Thus, it was contended that if an order could not be assailed before the Tribunal, the reasoning given in that order also could not be challenged. The provisional order had to be challenged before the appropriate forum and not the Tribunal. Hence, the applicant sought liberty to challenge the final order, if and when passed, before the appropriate forum. The Tribunal noted that even without

granting such liberty, the applicant would be entitled to challenge the order before the appropriate forum.

The Tribunal disposed of the application noting that the Panchayat was competent to pass appropriate orders in accordance with law after considering the objections of the applicant.

Pankaj Kumar Mishra
v.
Union of India & Ors

Original Application No. 162 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Decision: Dismissed
Keywords: Limitation, Misjoinder and multiple causes of action
Date: 24 November, 2016

JUDGMENT

The applicant, a resident of District Sonbhadra filed this application against the environmental pollution caused by the industries mainly the thermal power plants and coal mines located in the Singrauli Industrial Area. The applicant pleaded that due to the said pollution, the public was exposed to health hazards resulting in the violation of rights under Article 21 of the Constitution of India. Relying upon various studies and research papers, the applicant stated that the discharge of emissions and effluents such as mercury, disposal of fly ash in Rihand reservoir and residential areas led to severe diseases among the residents. Thus, the applicants sought proper collection, transportation and disposal of fly ash, as well as upgradation of roads, footpaths, etc., and issuance of directions to the respondents to install air pollution control systems, AAQ monitoring stations, installation of RO's in all affected areas and shifting of coal yards and ash-silo, closing of ash ponds, plantation of trees and restrictions to be imposed on dumping of fly ash into the water bodies.

The tribunal found that while the severity of the pollution is a matter of concern, and is already sub-judice in the cases of *Ashwini Kumar Dubey v. Union of India* and *Jagat Narain Vishwakarma v. Union of India*, the present application was not maintainable on the grounds of limitation, as the outer period of limitation (6 months + 60 days) under Section

14 of the NGT Act had been exhausted. Secondly, the application was also found to be hit by the requirements of Rule 14 of the NGT (Practice and Procedure) Rules, 2011 as per which an application must be based on a single cause of action/may seek one or more reliefs provided they are consequential to one another, but the application in question claimed multiple and independent reliefs relating to different respondents for different activities resulting in different and distinct pollution and having independent and distinct causes of action.

Finding the application bad for multiple and misjoinder causes of action, the application was dismissed. However, the Tribunal observed that the application highlights significant issues of pollution and violation done by the respondents in an area which had been declared as a critically polluted area and therefore granted liberty to the applicant to get impleaded as a co-applicant or supported respondent in OA No. 20 of 2014, if the applicant so desires.

M/S. Subramania Bharathi Housing Welfare Society
Vs.
The District Collector & Ors.

Application No. 264/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S. Rao
Keywords: Mobile Phone Tower, Jurisdiction
Decision: Dismissed
Date: 25th November 2016

JUDGMENT

This application was filed challenging the erection of a Mobile Phone Tower in Mangadu, Chennai on the grounds that it caused health hazards to the public. The Tribunal dismissed the application on the basis that the NGT had no jurisdiction for the same as emission of electromagnetic waves from the towers did not fall within the ambit and scope vested in the Tribunal under the NGT Act.

D.Ranganathan
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No.137/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Toxic Emissions, Noise Pollution
Decision: Dismissed
Date: 28th November 2016

JUDGMENT

In this application, the applicant contended that he had submitted a representation showing the ill effects of the concerned industry run by the 4th respondent, on the environment, by way of emission of toxic smoke, fumes and noise.

The Tamil Nadu Pollution Control Board in its reply stated that inspection of the unit had revealed that it was carrying out button screen printing work and after the complaint was forwarded to the Zonal Officer of the Greater Chennai Corporation, further inspection was carried out and it was found that the unit was no longer in operation, a fact which was communicated to the applicant. However, the applicant had filed the application three months prior to such inspections.

In such circumstances, it was found that the relief prayed for by the applicant had been granted and if the unit continued its activities, respondents State authorities were bound to close the same, immediately.

Accordingly, the application was disposed of.

Human Rights & Consumer Protection Cell Trust
v.
The State of Telangana & Ors
Application No.63/2016 (SZ)

Coram: Hon'ble Shri Justice N.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Water body, Encroachment, Restoration
Decision: Allowed
Date: 28th November 2016

JUDGMENT

The applicant filed the application against the encroachment of Sakhi Cheruvu (Waterbody), by the land sharks and mafias in collusion with local public servants and bringing up a number of unauthorized illegal constructions. The allegation of the applicant was that a portion of the said water body, which was adjacent to the land belonging to respondent No.9, was encroached upon and a factory shed was illegally constructed therein. The applicant stated that despite there had been several State regulations and also a Lake Protection committee upon the directions of the High Court of Andhra Pradesh was constituted which was assigned a number of tasks like listing of all lakes along with their FTL, removal of existing encroachments in the FTL and foreshore areas, preventing future encroachments and misuse of the lake environment etc., yet no steps were taken by the officials. Based on the said contentions, the applicant sought demolition of the illegal constructions and strict action against all the erring officials and land grabbers.

The Hyderabad Metropolitan Development Authority (HMDA) submitted that no approval for the said construction had been granted. Further, the Lake Protection Committee was submitting status report on the progress of survey of lakes periodically to Lok Ayuktha. It was also informed that site was a nala i.e. rain water channel which was within the limits of Buffer Zone, where constructions were prohibited. The

Respondent No.9 admitted that though the land was purchased by him, the construction was raised by some unknown persons and sought demolition of the same.

The Tribunal noted that since no permission, whatsoever, was obtained for the construction of the shed, the same was illegal. It also noted that the concerned officials acted as mute witnesses and had aided the encroachments. The Tribunal therefore disposed the application with direction to the official respondents to demolish the illegal construction within a period of two months from the date of the order along with complete restoration of the encroached part of the nala (water body) to its original condition.

Asirvatham Nagar & G.N Nagar
v.
The District Environmental Engineer & Ors
Application No.211/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Consent
Decision: Dismissed
Date:29 November, 2016

JUDGMENT

This application was filed against the M/s. Janatha Typre Retreaders ('3rd respondent'), with a prayer to direct the Tamil Nadu Pollution Control Board ('Board') to effect closure of the industry run by the 3rd respondent alleging that it had not obtained any consent to Operate.

It was contended by the Board that subsequently, an order had been passed directing closure of the industry, as it had been operating without consent. Both the applicant and respondents submitted that pursuant to the aforementioned order, the industry had been closed and the electricity connection had also been disconnected.

Therefore, the application had become infructuous and was disposed of.

G. Sundarrajan

Vs.

Union of India & Ors

Appeal No. 1 of 2012 (SZ)

Coram: Justice P. Jyothimani, P.S. Rao
Keywords: CRZ Clearance, Post facto clearance, Principle of precedent
Decision: Dismissed
Date: 29th November, 2016

JUDGMENT

The appellant, an environmental activist and trustee of a public trust, had filed an appeal against the Coastal Regulation Zone (CRZ) Clearance for the Kundankulam Nuclear Power Plant units 3 to 6, granted by the Ministry of Environment and Forest (MoEF). This clearance was granted on 25th July, 2012. The appellant submitted that the Expert Appraisal Committee (EAC) had not considered relevant factors such as ambient temperature, brine discharge, condenser cooling water, before appraising the project. Moreover, the desalination plant was already constructed even though the clearance did not mention about the CRZ Clearance. While recommending CRZ approval, the EAC had assumed the quantity of fresh water which would be required for the units 3 to 6 and it would be met by the desalination plant, already operating on the site. This amounted to the post facto CRZ Clearance and the EAC's assumption was at fault. Writ Petitions were also filed in the Madras High Court challenging the validity of the Environmental Clearance (EC). He had also submitted that there was a deficient study of impact on the fish resource and misleading information regarding Travencore coast. He submitted that the EAC's recommendation was against the precautionary principle.

The learned counsel of the appellant submitted that the EIA in respect of units 3 to 6 was carried out by M/s Engineers India Ltd, Gurgaon, an unaccredited agency. Grant of CRZ clearance based on this EIA would make it invalid. This view was also taken by the tribunal in *Aranmula Airport Case.* Moreover, a patent contradiction was found in the stand taken by the third respondent with regard to desalination plant. In the light of such contradiction, it can be implied that the grant of CRZ clearance was based on a factually wrong notion. Further, it was submitted that the procedure laid down in clause I (c) of the CRZ Notification was not followed and thus, the grant of clearance violated the CRZ Notification.

The respondent had denied all these allegations and submitted that the EAC's approval was based on the recommendations of the Tamil Nadu State Coastal Zone Management Authority (TNCZMA) and had been deliberately considered in three meetings. Further, they submitted that the unit shore region had no sensitive habitats like mangroves and coral reefs. It was submitted that all these points were raised before the Supreme Court in the SLP filed by the appellant against units 1 and 2 and the Court had given a finding which is applicable to units 3 to 6. Therefore, it was not open to the appellant to raise the same issue again, before this tribunal. Further, the Court observed that the establishment of desalination plant would not require any fresh EC, as it is not listed under EIA Notification of 1994 and 2006.

Considering the submissions of both the parties, the Tribunal observed that the writ petition and SLP were in respect of the units 1 and 2. However, references about units 3 to 6 were also taken in these petitions. That apart, the Supreme Court had extensively dealt with EC for units 3 to 6 in the judgment which includes the impact study. The Tribunal held that since the appellant had also not sought any review of the judgment, it has become final and is not just restricted to the units 1 and 2. Therefore, it was not open for the Tribunal to consider the Court's findings as only references and not binding upon the parties. That would be against the principles of precedents and judicial property. The Tribunal also referred to Art. 141 of the Constitution and various precedents to substantiate this view.

Therefore, in the view of binding nature of the decision rendered by the Supreme Court and being in a position to not grant the relief sought by the appellant, the appeal was dismissed.

Babu Lal Jajoo
Vs.
State of Rajasthan & Ors.

Original Application No. 85/2015 (CZ)

Coram: Hon'ble Justice Mr. Dalip Singh, Hon'ble Dr. Satyawan Singh Garbyal
Keywords: Micro irrigation tanks, Forest Clearance
Decision: Disposed
Date: 29 November 2016

JUDGMENT

This application was filed before the Tribunal seeking relief against the work of micro irrigation tanks executed by the State of Rajasthan. The contention of the applicant was that these tanks were disguised as deposit works without prior approval by the Central Government in accordance with the Forest (Conservation) Act, 1980. The applicant stated that the catchment area of 156 tanks were completely or partially falling in forest land and further submitted that the Respondents had flouted the High Court order passed on 29th May 2012 refusing permission to construct anicuts of more than 2m height and without proper survey and planned development to assess rainfall in the area. Consequently, the applicant prayed for immediate action to stop execution of any construction work without seeking approval of the concerned authorities.

Whilst the Respondents submitted that the State Government had granted exemption for forest clearance for the ongoing activities, the Tribunal directed the State to indicate whether the projects were a part of the approved working plan for the forest area in question as only such works could be exempted from the requirement of Forest

Clearance. Consequently, the Respondents submitted that the projects did not violate any provision of the Forest Conservation Act, 1980 as they were exclusively used for forest purposes only and not for irrigation or agricultural use. They further submitted that the said projects were initiated for the furtherance of the decided "Four Water Concept" for water conservation and the entire activity was in accordance with the approved working plan for forests.

The Tribunal accepted the said argument with the condition for strictly ensuring no misuse of the reservoirs and continuous monitoring of its impact on forest, wildlife, groundwater recharging and effect on water bodies. Allowing the applicant to approach the Tribunal in light of the water tanks being misused, the Tribunal disposed the application.

Goa Foundation & Anr.
Vs.
Goa State Environment Impact Assessment Authority & Ors.

Application No. 135/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance ('EC'), Fraud, Limitation, Collective Responsibility
Decision: Partly Allowed
Date: 29th November 2016

JUDGMENT

This application was filed challenging the EC issued by the Respondent No. 1 ('SEIAA') to the hotel/resort project of Respondent No. 5 on the grounds that the EC was the outcome of fraud committed by Goa State Expert Appraisal Committee ('SEAC') and therefore, the EC was *non-est* and liable to be set aside. The Tribunal noted that this litigation had travelled a long way wherein the interim orders of the Tribunal were challenged on the jurisdictional ground before the High Court of Bombay at Goa and after the decision of the Hon'ble High Court, the Tribunal had recorded on 21/12/2015 that all the matters with respect to Environment, Forest and CRZ clearance would be heard separately.

The applicants contended that the EC of the project was not recommended by SEAC through a proper conducted meeting but by a note only signed by the Member Secretary and Chairman, SEAC which was completely against the procedure laid down in the EIA Notification, 2006. The said allegation was supported by the fact that the minutes of meeting of SEAC recommending the grant of EC to the project were not available on record. The applicant also alleged that the SEAC in one of its appraisal meeting had

recorded that the appropriate authority for the grant of EC to the project in question would be the Ministry of Environment and Forest ('MoEF') and had also raised certain technical queries from the project proponent, the response to which was required to be critically evaluated and appraised by the committee. However, without any consideration of the said facts, the EC was recommended unilaterally and without taking any approval of the SEAC which reveals fraud and conspiracy on the part of the Member Secretary and Chairman.

In reply to the application, the respondent No. 5 had filed M.A. 259/2015 in which the respondent raised preliminary objections to the maintainability of the application stating that since the applicants had withdrawn a previous appeal under section 16 of the NGT Act, they cannot invoke the provisions of section 14 to challenge the impugned EC. Further objections were raised regarding the application being time barred. It was submitted by both the applicants and respondents that the project was facing legal hurdles in terms of tenancy related issues and the HC had issued stay to the project due to which there was no material progress in the development of the project at the site.

In order to understand the conspectus of the present case, the Tribunal looked into the chronology of events leading to the grant of the impugned EC, which indicated that the EC was recommended through a note signed by the Member Secretary and Chairman of the SEAC without any resolution or decision of the SEAC and no records of the meeting where such decision was concurred or ratified by the SEAC was placed before the Tribunal. The Tribunal referred in detail the scheme mentioned under clause 4 and 5 of the EIA Notification, 2006 and opined that the SEAC was expected to appraise the project with the multidisciplinary expertise as provided in Appendix VI but had failed to do so. Further, the Tribunal also noted that as per the scheme laid down in the EC regulation the SEAC was to function on the principle of collective responsibility and that in case there was no consensus in SEAC then the majority would prevail. The Tribunal also noted that when the project is recommended for grant of EC, then the minutes should clearly list out the environment safeguards and conditions which demonstrates the legislative intent to maintain full transparency in EC procedure.

Considering the above, the Tribunal noted that the EC granted was *non-est* in the eye of law for having been granted against the procedure laid down in the EIA Notification, 2006 and against the principles of natural justice. The Tribunal also stated that the conduct of the Member Secretary and Chairman did not amount to fraud but was an irregularity. Further, the Tribunal concluded that the application was not barred by limitation and directed that the impugned EC was to be kept in abeyance for 4 months, the Goa SEAC was to appraise the project as per the required procedure and the Chief Secretary of Goa was to take note of the conduct of Member Secretary and Chairman of SEAC and take suitable action.

Accordingly, the application was disposed of with no order as to costs.

Kashinath Jairam Shetye & Ors.
Vs.
Deltin Carevela & Ors.

Application No. 92/2016 (WZ)

Coram: Hon'ble Justice U.D Salvi and Hon'ble Dr. Ajay. A. Deshpande
Keywords: Eco Sensitive Zone, Coastal Regulation Zone ('CRZ')
Decision: Dismissed
Date: 29th November 2016

JUDGMENT

This application was filed against the respondent No. 1 Deltin Carevela, a floating hotel operating within the No Development Zone of CRZ-I on the Mandovi river which was also the buffer zone/Eco Sensitive Zone of Dr. Salim Ali Bird Sanctuary ["the Sanctuary"]. The main contention of the applicants was that the hotel was running its commercial activities in violation of the CRZ and environment regulations and therefore sought directions against the concerned authorities to remove the said hotel from the current location and place it outside 12 nautical miles, withdraw its consent as the same was obtained for a different registered Hotel and the current registration was an outcome of fraud and also immediately withdraw the mooring permission granted by the Captain of Ports. The applicants also sought declaration of one km buffer zone for Dr. Salim Ali Bird Sanctuary as per Government guidelines and the Draft ESZ Notification dated 03rd March 2014. The applicants also sought compensation for loss of livelihood of fishermen and damage to the environment.

The Respondent No. 1 denied the allegations claiming that there was no violation of the statutory provisions and the main grievance of the applicant that there was non-compliance of the Draft notification was also without merit as the draft was replaced by a Final Notification as per which, the hotel/vessel was outside the buffer zone/ESZ of the Sanctuary. Thus, it was argued that in absence to any challenge of the final notification, the positioning of the vessel cannot give rise to a cause of action under the draft notification. The respondent further alleged that there was no fraud committed in the registration of the vessel since initially the vessel was registered by the Maharashtra Maritime Board, Mumbai which was later replaced by the Department of Ports & Inland Water Transport, Government of Karnataka. It was also stated that no harm to the eco-system and biodiversity was caused during the operation of the hotel and it had complied with the consent conditions.

From the documents presented on record, the Tribunal was convinced that the vessel had merely been re-registered on the basis of territorial jurisdiction as was required under statutory provisions and therefore no fraud was committed by the respondent. With regard to the allegation that the vessel was in an Eco-Sensitive Zone, the respondent had submitted that the vessel was located at the Southern side at a distance of 300 meters from the Sanctuary i.e beyond the extent of the Eco-Sensitive Zone and there had been no violation of the final notification issued by the MoEF on 24/02/2015 in respect of the Sanctuary. The Tribunal noted that the application was to be adjudged on the basis of the final notification which had replaced the draft notification relied upon by the applicants. The Tribunal also noted that the applicants were aggrieved with the positioning of the vessel which during the pendency of the application had been changed and the vessel had now been positioned beyond the ESZ covered under both the draft and final notification, thus rendering the application infructuous.

Accordingly, the application was found to be without merit and therefore disposed of with no order as to costs.

Jai Bhuvan Builders Pvt. Ltd.
Vs.
Goa Paryavaran Savrakshan Sangharsha Samitee & Ors.

MA No. 255/2015 in Application No. 137/2015 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Construction, No development Zone, National Highway, Jurisdiction, Limitation
Decision: Dismissed
Date: 29th November 2016

JUDGMENT

This application was filed alleging that the construction activities carried on by the Respondent No. 1 were illegal, unauthorized and caused environmental hazards in the No Development Zone ('NDZ') of National Highway ('NH') 17. It was the case of the applicant that the Respondent No. 1 could not have received Environmental Clearance ('EC') as it had encroached extensively upon the NDZ of the NH and that due to certain political interest, the mandatory guideline of maintaining 75m NDZ on NH 17 was diluted and deviated for the project area of the 1st respondent from 75m to 40 m.

The applicant prayed for directions to the 1st respondent to remove/demolish the part of the concerned project standing in the NDZ area and to the 2nd-5th respondents to comply with the same. In reply to this application, Respondent No. 1 filed M.A. No. 255/2015 wherein it raised preliminary objections stating that the application should be dismissed for want of jurisdiction and was barred by limitation. The main objections raised by the

respondent were that there was no cause of action, that the issue related to restriction of activities along the NH were not listed in the schedule appended to the National Green Tribunal Act and that the term NDZ was alien to the National Highways Act.

Considering the arguments put forth, the Tribunal noted that the applicant had indirectly challenged the EC and stated that it was a well-settled principle that what cannot be done directly, cannot be done indirectly. This issue arose because initially, the applicant had contended that the respondent did not have EC to carry on the project but after the respondent presented the EC, the applicant asked to amend its application, after which, it indirectly prayed to quash the EC in its amended application. The Tribunal also held that the issue of the restriction on the national highway width was outside the purview of the NGT and the remedy for the same rose elsewhere and the cause of action as portrayed did not constitute the cause of action as envisaged under Section 15 of the NGT Act.

Accordingly, the Tribunal allowed the M.A. filed by the respondent and dismissed the O.A. with order as to costs of Rs. 10,000 which was to be paid by the Applicant to Respondent No. 1.

Kashinath Jairam Shetye
Vs.
The State of Goa & Ors.

Application No. 169/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Pollution Control Board, Appointment, Disqualification
Decision: Dismissed
Date: 30th November 2016

JUDGMENT

This application was filed by the applicant for directions against the Goa Pollution Control Board alleging that since the Chairman and Member Secretary of the Board do not hold requisite qualifications and have abused their position, their services must be discontinued and till new appointments were made, the charge must be handed over to the Central Pollution Control Board. The applicant further prayed that the appointment of the eligible members be made as per the Judgment of the Principal Bench passed in *Rajendra Singh Bhandari v State of Uttarakhand & Ors*, O.A No. 318/2013 dated 24.08.2016. The applicant also sought reconstitution of the GPCB comprising of at least two members who were renowned environment activists without any political interference.

The applicant drew the Tribunal's attention to Section 6 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 8 of the Air (Prevention and Control of Pollution) Act, 1981 to explain the grounds urged by him to disqualify the Chairman and the Member Secretary of the GPCB. However, the tribunal after perusing the relevant

provisions and the grounds contested by the applicant, did not find any material on record which manifested the attributes of disqualification against the Chairman and Member Secretary. It further observed that the allegations raised by the applicant that there had been political interference in the appointment of the existing members was vague and general in nature and failed to point out any of the disqualifications as mentioned under the provisions invoked. The Tribunal also noted that the Judgment in O.A. 318/2013 was not *in rem* as it confined itself to the appointment of the members of Uttarakhand Pollution Control Board.

Thus, in the absence of any such material which could show that the Chairman and Member Secretary had abused their position as a member or were not qualified to hold the said position, the Tribunal did not find it fit to entertain the application and disposed the same with no order as to costs.

Mr. Suvarnasangeet Vernekar
Vs.
The Goa Coastal Zone Management Authority & Ors.
Application No. 76/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Coastal Regulation Zone (CRZ), Construction, Jetty, Restoration, Compensation, Environmental Damage, Consent, Mangroves, Livelihood
Decision: Allowed
Date: 30th November 2016

JUDGMENT

This application was filed challenging the construction activity by Respondent No. 2 (Department of Water Resources, Goa), to construct Jetty in the guise of repairing and reinforcing the existing bund in contravention of the CRZ Notification 2011. The applicant sought an order to stop the construction activity and to order protection of the bund (Tarchem Khazan) situated along Siolim beach of river Chapora in Goa. Further, orders were sought to direct restoration of bund, repair of property damaged and protection of environment along with collateral relief to direct the respondents to pay compensation to the affected parties. The applicant submitted that he was a tenant living in the area surrounding the bund. It was his case that the impugned construction activity was undertaken without hearing grievances of the affected parties. The applicant submitted that the impugned project envisaged construction of 36 pillars for which no direct study was conducted to assess consequences of such construction. Further, the applicant contended that the construction activity would endanger and affect the agricultural fields of the applicant and would cause permanent damage to the mangroves, marine life,

causing severe impact on ecology. He also contended that the respondents had ignored the requirement of an EIA and started the construction without it. The applicant also contended that the Goa Coastal Zone Management Authority (GCZMA) had issued NOC on incomplete application submitted by Respondent Nos. 2 and 3 thereby which it had failed to enforce the provisions of CRZ Notification, 2011. Further, the applicant submitted that the cost of the impugned project was shown as Rs. 2.5 crores but subsequently it was increased to 12 crores which implied a substantial change in the scope of the project. The applicant also alleged that the impugned project was undertaken due to political interests and the proposed jetty was planned to house and dock casinos in the area.

In reply to the application, GCZMA stated that it had re-examined the project and after taking opinion of the experts found that certain things were to be done to safeguard evil of the project but it had not reconsidered or cancelled the EC granted. Respondent Nos. 2 and 3 denied all averments made in the application and questioned the maintainability of the application on the ground that none of the reliefs sought in the application were covered under the provisions of Sections 14 and 15 of the NGT Act, 2010. The Respondents also submitted that they intended to carry out development of riverfront along River Chapora and for the same permission was sought from GCZMA.

Considering the above arguments and evidence on record, the Tribunal noted that the Tarchem Khazan bund was meant for control of water movement between River Chapora and the fields. It was also noted that the impugned project did not envisage destruction or closure of bund. Rather the project pointed towards reinforcing the bund and there was an inclusion of another project called riverfront development project. Accordingly, the Tribunal opined that the grievance of the applicant was that the construction activity was in the guise of reinforcing and maintaining the bund. But the project was a pretext for developing the riverfront and to create a place for harboring casinos and other commercial vessels for the commercial exploitation of river sources and for that purpose no EC had been obtained. Taking into consideration all aspects of the application, the Tribunal raised the question of whether the project required NOC and an EC. To answer this issue, the Tribunal drew its attention to para 4 under the CRZ Regulation 2011, which showed that the clearance was mandatory and would be given for any activity if it required waterfront and offshore facility. The Tribunal noted that in this case, both the bund and the jetty were waterfront projects so the regulation would apply.

In terms of the procedure to be followed for clearance, the Tribunal referred to regulation 4(2) of the Notification and stated that it would depend on the nature of the project. If the project was covered under CRZ, not attracting EIA notification 2006, then clearance was to be given by SEIAA. In this case, the Respondents had not followed the required procedure and therefore the Tribunal noted that the project was sanctioned illegally. For the aforesaid reasons, the Tribunal held that the grant of permission by the GCZMA was not permissible and was quashed. The Tribunal directed that the Respondents should not proceed with the construction of the jetty until necessary permission under the relevant provisions was obtained. The Tribunal also voiced its concern over the regulatory affairs

of the GZCMA for not complying with its directions issued in a previous judgment to strictly comply with the CRZ regulations.

Accordingly, the application was disposed of with no order as to costs.

Dharmaraj C.S
Vs.
State of Kerala & Ors
Application No. 409/2013 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Shri P.S Rao
Keywords: Quarrying, EC
Decision: Allowed
Date: 2nd December 2016

JUDGMENT

This application was originally filed before the Kerala High Court for a writ of mandamus directing the respondents to ensure that no quarrying operations are undertaken without proper and valid licenses, consent and permit from the concerned authorities and to quash the permission and no objection certificate granted to 174 quarries. Following the directions of the Supreme Court in Bhopal Gas Peedith Mahila Uduyog Sangathan v. Union of India, the High Court transferred the case to the Tribunal.

Even though the applicant consistently did not appear before the Tribunal, the application was not disposed for default, considering the importance of the issue and the orders passed by the SC. It was submitted that EC was necessary for mining permit even if the extent of lease area was less than 5 hectares and even for the purpose of renewing mining license for the quarries. Therefore, irrespective of the extent of the mining area, EC was necessary and therefore, nothing survived the original application.

Accordingly, the application was disposed directing respondents 1-6 to ensure that there is no mining without all statutory requirements including EC.

Additional Ambernath Manufactures Association
Vs.
Maharashtra Pollution Control Board & Ors.
Appeal No. 37/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Mr. Ranjan Chatterjee
Keywords: Principle of Natural Justice, Consent, Closure, CETP
Decision: Allowed
Date: 2nd December 2016

JUDGMENT

In July 2016, the Maharashtra Pollution Control Board issued an order against the appellant to shut down its Central Effluent Treatment Plant ["CETP"] in Thane, under section 33A of the Water Prevention and Control of Pollution Act, 1974 ["Water Act"]. Aggrieved by this order, the current application was filed with the prayer to quash the impugned order as being against the principle of natural justice. In addition, relief was sought to permit running of the CETP pending consideration of the Appeal and directions to the respondents to grant consent to run the CETP.

On perusal of the records, the Tribunal noted that the CETP was established at Ambernath by Maharashtra Industrial Development Corporation ["MIDC"]. Thereafter, MIDC entered in a tripartite agreement with a private contractor named M/S Ambernath MIDC, CETP Co. Pvt. Ltd. The contractor commenced the operation of CETP after obtaining the consent from MPCB but after running the CETP for some time abandoned the operation. MIDC then transacted with the appellant and handed them the charge of CETP. During the working of the CETP, the officers of MPCB inspected and found that CETP was not working as was required and therefore issued a Show Cause Notice to M/S Ambernath

MIDC, CETP Co. Pvt. Ltd. to show cause as to why an order should not be passed to stop the running of CETP and as to why the competent authority should not be directed to disconnect water and electricity supply to the CETP. The contractor failed to send a reply to the notice, consequent to which the MPCB issued a closure order to the appellant.

The appellant was aggrieved about the fact that the notice had been issued to the contractor and if the MPCB had to take any action at all, they should have complied with the mandatory provisions and issued a notice to the appellant since it was the appellant who was running the CETP. To this, the MPCB contended that the MIDC was the recipient of the authorization from MPCB and by internal arrangement with the appellant, allowed it run the CETP. MPCB was only concerned about running of the CETP properly and not as to who was in-charge of it at the time the notice was issued.

However, according to the Tribunal, the actual question for consideration was whether the impugned order was preceded with the show cause notice to the appellant. Referring the section 33A of Water Act and 31A of Air Act, it was held that even though the Board had the power to issue any direction in writing to any person and that such person should be bound to comply with such direction, when it came to the question of issuing a show cause notice, the Board in the present matter had issued the show cause notice to the contractor and had issued a direction for closure under section 33A of the Water Act to the appellant. This resulted in non-grant of reasonable opportunity and violation of the principle of natural justice. Further, the said provisions requires the person-in-charge of running the industry to be answerable. In this case, the CETP was the property of MIDC and it had entered into an agreement with the contractor for its operation. Subsequently, the contractor was granted consent to run the CETP. Therefore, if any contravention of the CETP was noticed the contractor was bound to answer. Therefore, neither the present appellant was authorized to run the CETP nor could be treated as an applicant under section 26 of the Water Act. However, as the person in charge of running the CETP, the appellant had to answer the Board but as the Board had failed in issuing the Show Cause Notice, the impugned order for closure of the CETP could not have been passed.

In these circumstances, it was found that the impugned order cannot be sustained and was therefore set aside and quashed. The Board was given the liberty to take steps as permitted by law and in case of any improper functioning by the appellant, the Board would be entitled to exercise its lawful power.

Accordingly, the appeal was disposed with no order as to costs.

U.K District Consumers & Citizen Welfare Association & Ors.
Vs.
State of Karnataka & Ors.
Application No. 251/2014 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Compensation, Polluter Pays Principle, Air Pollution, Water Pollution
Decision: Disposed
Date: 5th December 2016

JUDGMENT

This application was originally filed before the Karnataka High Court and was transferred to the Tribunal following the directions of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India. Following the High Court's order with regard to prayer nos. 1, 2, 3, 4, 5 & 8, the only grievance that remained was regarding prayer nos. 6 and 7.

Prayer No.6 was to grant a writ of mandamus directing the respondents to maintain Belade Island as a natural island whilst prayer no. 7 was to grant a writ of memorandums directing the respondents 15-27 to pay compensation to the surrounding residents on the principle of "polluter pays".

When the matter was ready to be heard before the Tribunal, the applicants did not appear despite a service of notice to the applicant's counsel as well as the Amicus Curiae. The Tribunal observed that although the reliefs prayed for had not become infructuous, the same could not be decided on merits in the absences of the applicants. Subsequently, they were constrained to dismiss the application for default. It was also brought to the notice of the Tribunal that large quantities of iron ore heaps were stacked at Karwar and

Belekeri Port area with torn tarpaulin sheets causing pollution. In view of the same, an order directing the Board to file a detailed report suggesting whether the heaps had to be removed and if so, where the ore had to be shifted, was issued, after which, the Board submitted a scheme for the protection of the iron ore during the monsoon period and suggested to dispose the cargo by auction. The Board also submitted further conditions to be imposed at the time of auction such as restriction on transportation vehicles, water sprinkling arrangement and collection of spilled iron ore.

While disposing the application, the Tribunal directed the Port Officer to take immediate steps to dispose the heaps of iron ore by way of auction to prevent air and water pollution and by complying with the conditions imposed by the Board. Further, the respondent was directed to conduct the auction within a period of 6 months along with a report to be filed before the Tribunal.

Accordingly, the application was disposed of with the above directions.

Meenava Thanthai K.R. Selvaraj Kumar
v.
The Chief Secretary, Government of Tamil Nadu & Ors.
Application No. 172/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Water Pollution, Coal Transportation
Decision: Dismissed
Date: 5 December, 2016

JUDGMENT

This application was filed for a direction to the authorities (Respondents No. 1-10) to initiate action against the Respondent company (Respondent No. 11) for encroaching and polluting Kosasthalaiyar River while transferring coal through a conveyor belt from harbor to stock yard, thereby affecting the livelihood of the fishing community.

In so far as this case was concerned, the records filed even by the applicant showed that the 11th respondent had been carrying on transportation of coal but there was no possibility of causing pollution. When an issue was raised about discharge of effluents into the river, an undertaking was given by the said respondent that no untreated effluents would be discharged into the river and this had been ensured.

Accordingly, the Tribunal made it clear to the respondent to maintain the conveyor belt and to ensure no leakage from the same. In the event of any such failure, it was left open to the applicant to approach the Tribunal for necessary relief or to proceed with another application.

With the above direction, the application was closed.

Reliance Infrastructure Limited
Vs.
Union of India & Ors.

Application No. 145/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Underground Cables, Forest Land, Premature
Decision: Partly allowed
Date: 5th December 2016

JUDGMENT

This application was filed seeking permission to conduct survey and lay cables from MSETCL Borivali Station to Aarey Colony. The applicant stated that the permission to do the same had to be granted by the Respondent No. 5, Dairy Development Commissioner, but it had declined to consider the request of the applicant. The main grievance of the applicant was that the implementation of its project was very essential as the present load from the existing station was endangering life and creating risk factor for the residents in the vicinity.

The Respondent No. 5 had declined permission on the ground that the portion of Aarey Colony was on the forest land and therefore, permission from the Forest Department was necessary. On considering the propositions supporting the relief sought, the Tribunal opined that the permission for laying underground cables should be considered only when there was proper survey of the area for determination as to whether forest land was also involved. In such circumstances, the Tribunal noted that the request for relief was premature but permitted the applicant to conduct its own survey which would

indicate location of the area involved for the project. The Tribunal directed Respondent No. 5 to permit the Applicant to conduct survey of the area in Aarey Colony.

Accordingly, the application was disposed of with no order as to costs.

A. Balasubramaniam
v.
State of Tamil Nadu & Ors
Application No.35/2013 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S. Rao
Keywords: Noise Pollution, Toxic Wastes, Effluents, Air Pollution
Decision: Dismissed
Date: 9 December, 2016

JUDGMENT

This application was originally filed before the Madras High Court with a prayer to issue a writ of mandamus directing the Tamil Nadu Pollution Control Board ('Board') to initiate appropriate action against respondent no.3 (Cambodia Mills) forbearing them from causing noise pollution by the use of generators, discharging toxic wastes and effluents into the streets and neighboring lands and from discharging pollutants into the air in and around the residential areas.

When this matter was transferred to the Tribunal according to the Supreme Court's directions in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*, the Board was directed to make an inspection of the unit and file a status report, in which it was shown that the noise level was within the parameters fixed for industrial areas. With regard to the discharge to sewage, the respondent filed an affidavit stating that it was taking steps to connect the sewage generated from the Mill to the nearest UGD line of the Coimbatore Municipal Corporation and had entered into an agreement with Sree Kamalam Enterprise for the disposal of sewage, in the interregnum period.

Therefore, the applicant submitted that the application could be closed in light of the affidavit. The Tribunal disposed of the application with a direction to the respondent no.3 to complete the arrangement for connecting the sewage within a period of 8 months and in the meantime, to transport the sewage to the sewage treatment plant with all mandatory requirements.

Sunder Singh

v.

State of NCT of Delhi & Ors

Original Application No. 174 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. B.S. Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Wetland, Encroachment, Restoration
Decision: Allowed
Date: 9 December 2016

JUDGMENT

The applicant was the President of the Residents Welfare Association of Issarpur, New Delhi, aggrieved by the inaction of the respondents with respect to the removal of illegal encroachments on a water body in the area. It was the case of the applicant that the encroachments have rendered the water unfit for human consumption, and prayed for the restoration of the water body/its conversion into a reservoir. The applicant made various complaints pursuant to which demarcation of the water body was done by INTECH engineers.

The respondent submitted that a writ petition with respect to the land in question was filed before the High Court of Delhi (Vinod Kumar Jain vs. Govt. of NCT of Delhi, WP No. 3502 of 2000) wherein Court Commissioners were appointed which had carried out survey of water bodies and suggested action plan for revival of the water bodies which also included the land in question. When the area was inspected by Court Commissioners

they observed reduction in the area of the water body from its total area due to encroachments by the villagers and the same was also found polluting as filthy water from the village was flowing into it.

The tribunal found that there had been a long pending dispute in the village regarding the issue of the water body ["Jorhad"], and that the area had been lying underdeveloped. The tribunal therefore held that to prevent further encroachment, boundary pillars had to be constructed, the water body to be cleaned within a period of three months and eventually developed as a reservoir. The tribunal also constituted a team to monitor the process of revival, and ensure that no residential/commercial infrastructure be planned so as to maintain the characteristics of the wetland.

Accordingly, the application was disposed.

Sarika & Ors.
v.
State of Kerala & Ors.
Application No. 301/2013 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Solid Waste Management
Decision: Dismissed
Date: 13 December, 2016

JUDGMENT

This application was originally filed before the High Court of Kerala for a writ to quash the project report prepared by the 2nd respondent (Municipality) for the solid waste management and to command the respondents to implement the waste treatment plant in a scientific way and not to extend the dumping of waste in Ward No.23 of the concerned municipality. The application was filed with a claim that the Municipality had been using around 2 acres of land in Ward No.22 for dumping of municipal solid wastes generated in the municipal areas, forcing residents to shift their residences to Ward No.23 due to the pollution being caused by such waste. Further, the applicant suspected increased pollution, not only in Ward No.22 but also No.23, which would ultimately spoil the entire vegetation in the nearby land.

The 2nd respondent argued that the Municipality was originally in possession of a few acres of land in Ward No.22 out which a part of it was being used as Municipal Waste Dumping Yard since the last 70 years. The respondent contended that the area of the

existing dumping yard was insufficient for installing a modern and scientific waste treatment plant due to which they had acquired the 4.5 acres of land, for which they had agreed to construct a wall around the plant and maintain a green belt with careful treatment processes to avoid any pollution. It was contended that ever since the acquisition, people were trying to create obstacles to see that the project did not materialize. The Respondent held that on completion of the said project, the existing waste dumping yard would be used as land filling and capping place and for construction of a watchman shed, office, well, water tank, toilets and bathroom and if the project was not materialized, it would bring devastating results.

Upon inspection of the site, it was found that it was likely to get flooded during monsoon, for which the Municipality was planning to raise the land level of the area and that no construction work had started on the site, except the completion of compound walls. It was also observed that the space between the walls was to be used as a buffer zone of no development and the plant was proposed in a way that there would be no residences within 50 m from the inner wall.

The main apprehension of the applicants related to the disastrous environmental problem in case the disputed land was used for dumping solid waste and repetition of the failure of the project. The respondents contended that they did not have another site and with compliance of strict and specific conditions, they may achieve the target. Therefore, they must be given a chance.

The Tribunal held that there was no need to give any directions related to the setting up of solid waste treatment plant except to comply with the criteria for site selection and standards for setting up solid waste processing and treatment facility. It also reminded the respondents of its responsibilities and duties under the Waste Management Rules, 2000 and that if the applicants found any defect in consideration of granting of authorization, they always had the right to approach the Tribunal, challenging the authorization.

Accordingly, the application was disposed of.

Exim Knits Pvt. Ltd
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors
Application No. 183/2015 (SZ)

Coram: Hon'ble Justice M.S. Nambiar, Hon'ble Justice Shri P.S Rao.
Keywords: Consent, Fine
Decision: Allowed
Date: 13th December 2016

JUDGMENT

The application was entertained by the Hon'ble Tribunal upon transfer of the same from the High Court of Madras. The application was filed challenging the order of the Tamil Nadu State Pollution Control Board which directed the applicant (Exim Knits Pvt. Ltd.) to remit an amount of 76,77,480 by way of fine for a period of 467 days, claiming that the applicant unit came under category "c" (Units which were seeking time to install RO and RMS) as per the order of the High Court dated 4.07.2007 which made units falling under category "c" liable for fine. The question which required consideration in the present application was as to whether the unit of the applicant was rightly categorized as "c" and was liable to pay fine.

It was the case of the applicant that it had been granted consent in 2006, under section 25 of the Water Act, for a capacity of 274 KLD and the special conditions annexed to the Consent to Establish had revealed that the unit had installed the RO plant and the RMS at the time of establishment, even before the consent was granted and even prior to the

order of Hon'ble Madras High court dated 4.07.2007. Even the Monitoring Committee constituted by the High Court had inspected the unit and had found the RO and RMS installed, however, the Committee found the RMS to be inadequate. The Tribunal took note of the fact that previously the Board had issued a show cause notice to the applicant wrongly categorizing it as "b" (Units making reduction of production capacity by removing process machines) which was clarified by an explanation made by the applicant stating that it had not made any application to the Board for reduction of production capacity by removing process machines and thus was not a category "b" either.

The Tribunal was of the view that a unit would pay fine only if it falls under category "c" i.e. the case if the unit was found to have not installed the RO and RMS, which was not so with respect to the applicant unit and as a result the unit did not come under category "c" or even category "b" as the applicant unit never claimed reduction of production capacity by removing the process machines which is necessary for a unit to fall under category "b" according to Hon'ble High court's order. In this case, the unit was a category "a" which was not required to pay any fine.

Considering the above, the Tribunal held that the applicant was not liable to pay the fine amount demanded under the impugned order and that it did not come under category "c". Accordingly, the application was disposed of with no costs.

Sri Mantri Shyam Prasad
v.
Chief Secretary, Government of Andhra Pradesh & Ors.
Application 86/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Change of water course, Landfilling
Decision: Dismissed as withdrawn
Date: 14 December, 2016

JUDGMENT

This application was filed with a prayer to punish the respondents for violation of the provisions of the APWALTA Act 2002, the Environment (Protection) Act, 1986 and the Indian Penal Code, relating to the change of watercourses and canals.

When this application was called before the Registrar, the applicant made an endorsement to the effect that he was withdrawing the application. In the withdrawal memo, he stated that after receipt of notices from the Tribunal, the District Collector had directed the concerned authorities to remove the landfilling and restore the water courses to the original stage and pursuant to such direction; the officials of the Departments had done so. Therefore, the purpose and object of filing the application had been achieved and it had protected 100 acres of land from inundation and drought.

Accepting the contents of the withdrawal memo, the Tribunal permitted the application to be withdrawn and accordingly, the application stood dismissed as withdrawn.

D. Viswanathan
v.
State of Tamil Nadu & Ors
Application No. 168/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Gas Crematorium
Decision: Dismissed
Date: 15 December, 2016

JUDGMENT

In this application, the 5th respondent produced the resolution passed by it, wherein, considering the objections raised regarding putting up of a gas crematorium; a decision was taken to choose an alternate place.

In view of the same, the prayer of the applicant had been effectively met and nothing survived in the application. Accordingly, the application stood closed.

Smt. Radharani Vajpayee
Vs.
Department of Mining & Ors.
Original Application No. 140/2013 (CZ)

Coram: Justice Mr. Dalip Singh, Dr. S.S. Garbyal
Keywords: Illegal mining, Stone crushers, Restoration
Decision: Disposed
Date: 15 December 2016

JUDGMENT

This application was filed as a result of alleged illegal mining activities carried out in Shankar Gadh, in the hills of Dewas, and its adjoining areas. The complaint arose due to the evident destruction of the hills and forests, which had adversely affected the ecology of the said area due to the mining operations. The applicant pointed out the absence of an environmental impact assessment considering that the area in question was a natural forest and mentioned the presence of stone crushers in the same area, which were operating without due consents under the Air and Water Act. The applicant strongly emphasized on the overall illegality of the ongoing activities and urged the Tribunal to ban the same. The applicant's contention was in light of Deepak Kumar judgment passed by the Hon'ble Supreme Court since large number of mines and stone crushers were operating in a small area of 30 hectares without considering the cumulative impact assessment.

The Tribunal found that the mining leases were granted for long durations which varied from 10-20 years. Considering the negative environmental impact of the extensive

mining operations which were being undertaken for such long duration, the Tribunal directed the State to take measures for protection and preservation of the forest, as a consequence of which the State ordered for cancellation of 33 mining leases and closure of all the stone crusher units operating in the area.

In light of the above actions, the Tribunal issued further orders directing the Forest Department to prepare a closure plan and restoration plan to prevent future illegal activities. When the cost of restoration was determined at the rate of Rs. 5 lakhs per hectare, the lessees and quarry operators were directed to deposit 50 percent of the cost with the remaining 50 percent to be borne by the State. It was directed that an amount of Rs. 5 lakhs was to be deposited by each mining leaseholder in the manner of one installment of 2 lakhs on 31.01.2017 and subsequent installments of Rs. 1 lakh each subject to the upper limit of Rs. 5 lakhs per leaseholder at the rate of Rs. 1 lakh per hectare by the last date of every calendar year.

Accordingly, the application was disposed of.

Mahesh Dubey
Vs.
Chhattisgarh Environment Conservation Board & Ors.

Original Application No. 507/2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar (Chairperson), Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member), Hon'ble Mr. Bikram Singh Sajwan (Expert Member), Hon'ble Mr. Ranjan Chatterjee (Expert Member)
Keywords: Bio-Medical Waste, Treatment facility, Incineration
Decision: Allowed
Date: 15 December 2016

JUDGMENT

In the year 2014, the Applicant filed the case seeking relief against the improper management of bio-medical waste in the State of Chhattisgarh, praying that the Chhattisgarh Environment Conservation Board ["CECB"] be directed to comply with the Bio-Medical Waste (Management and Handling Rules, 1998) ["the Rules"] subsequently superseded by Rules, 2016. Additionally, it was also pleaded that the Department of Health, State of Chhattisgarh, be instructed to present a report regarding the measures it has undertaken towards the management of medical waste, since the Rules have been enacted. The application also requests the restoration and rehabilitation of areas as per the 'Polluter Pays' principle, and that action be taken against the hospitals of various districts for failure to comply with the Rules.

It is the case of the Applicant that out of the 740 healthcare facilities in the State of Chhattisgarh, only 181 have their own treatment plants for the management of bio-medical waste. These treatment plants, as alleged by the applicant, fail to segregate waste,

which poses an imminent risk to rag pickers and stray animals. In addition to this failure at the level of healthcare facilities, even the CECB does not carry out regular monitoring exercises with respect to the management of bio-medical waste. The applicant has argued that the State healthcare facilities operate in complete disregard to the Rules, as waste is found in a haphazard manner, mixed with the municipal solid waste ["MSW"], without going through the required processes of disinfection. Despite the dire state of waste management, the CECB has only issued show cause notices to 181 facilities, and no further action has been taken.

On the other hand, the Respondents submitted that bio-medical waste generated at different healthcare facilities across the state is being segregated at source, treated/disinfected, and disposed of at the earmarked disposal sites using deep burial method. The Respondents also argued that there is no mixing of wastes, and that despite inadequate manpower, waste management is being monitored by it. With respect to the contention that no action is being taken against offenders of the Rules, it was submitted by the Respondent that in addition to issuing show cause notices to healthcare facilities, legal action has been initiated for proper compliance of the said rules.

The Tribunal reached the conclusion that in the State of Chhattisgarh, the Rules were not being followed with respect to the management of bio-medical waste, after taking into consideration a number of factors. First, the Respondents were unclear even about the total number of healthcare facilities in the State as reflected by various inconsistencies in the information provided by them. Second, the State has failed to check whether healthcare facilities were duly authorized, let alone kept track of how much bio-medical waste was being generated by them. Third, an inadequate number of treatment plants are installed in the states, and of those installed only two were found to be in accordance with the requirements of the Rules.

Therefore, the Tribunal directed for constitution of a State Level Committee chaired by the Chief Secretary, State of Chhattisgarh, which would have the responsibility of preparing an inventory of the total number of healthcare facilities in the State, and formulating an action plan for the implementation of the Rules. Subsequent to this, the Committee was also directed to monitor the waste management across these healthcare facilities, and submit a compliance report to the Tribunal within three months. Finally, the Tribunal also directed constitution of District Level Committees (with the District Magistrate as the Chairman) to implement the action plan of the State Level Committee/ensure the implementation of the Rules.

Accordingly, the application was disposed of with the aforesaid directions, with no order as to costs.

Resident's Welfare Association & Ors

v.

New Okhla Industrial Development Authority & Ors

Original Application No. 225 of 2015 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Construction, Change of Land use, cause of action
Decision: Dismissed
Date: 15 December 2016

JUDGMENT

The application was filed by a registered society working for the welfare of residents against the Respondents' allotment of a plot for construction of commercial high rise buildings in a residential area of Sector 23, Noida. The applicants contented that the construction of buildings would be detriment to the environment. It was the case of the respondent that it is permissible to have a commercial pocket within a residential sector, and the same was envisaged from day one in the layout plan of the sector, to which there have been no changes. The respondent further denied the contention of the applicants that by having commercial shops in the area there would be increase in the use of generators or vehicles leading to pollution. It was further submitted by the respondents that the construction activity of this nature would not require EC or EIA.

The Tribunal noted that as per the original layout plan of 1986, the area in question of sector 23, Noida was within the commercial plot wherein construction of small shops was

permissible. The plot in question was demarcated as a commercial plot within a residential area. The tribunal found that as of then the plot was vacant and only an advertisement for allotment had been published which was in accordance with law, therefore, any case of the applicant for environmental damage is merely in anticipation. The tribunal also observed that the demarcation of commercial plot was done about 3 decades ago and challenge to such demarcation or allotment at the present stage was devoid of merits. As a consequence of the case merely being one of apprehended damage, the tribunal held that there hadn't been any violation of environmental laws so as to call for interference by the tribunal.

G Ramesh
Vs.
The District Collector, Tiruvallur and Ors.
Review Application No. 6/2016
In
Application No. 64/2015 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Shri P.S Rao
Keywords: Review
Decision: Allowed
Date: 15 December 2016

JUDGMENT

The applicant through this application approached the Hon'ble Tribunal for review of the order dated 17.10.2016 in the original application. The case of the review applicant that in the reply filed by the District Collector in the original application, he was misrepresented as an encroacher alongwith the other applicants in OA 121 of 2015. On the basis of the said statement, the OA was dismissed by the Tribunal. However, the Government clarified the stand that the present review applicant was not an encroacher while the others were.

After clarifying the correct position of the Government as well as the applicant, the Tribunal allowed the review.

Mr. Tarun Bharat Chauhan & Anr

v.

Union of India & Ors

Appeal No. 110/2015 (PB)

Coram: Hon'ble Mr. Justice M.S. Nambiar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Mr. Ranjan Chatterjee
Keywords: Municipal Solid Waste, Environment Clearance, Land Use
Decision: Allowed
Date: 16 December 2016

JUDGMENT

The appellants, residents of Buland Heights Crossings Republic, NH-24, filed an application seeking directions to restrain the respondents from constructing Municipal Solid Waste Plant [MSW Plant] in Village Dundahera Ghaziabad, cancel the NOC issued by the U.P Pollution Control Board ["PCB"], and direct the Union of India through MoEF and Ministry of Finance to not to issue any grant for construction of the plant. When it became clear that Environment Clearance ["EC"] had been granted to the project, the applicants converted the application into appeal, and inserted a specific prayer to cancel the EC. The land use in Village Dundahera was changed from agriculture to residential under a policy of the State Government, and the land reserved for SWM Plant was also included in residential use, after which many projects started in the area. Before the change of use, NOC had been given by the PCB, for construction of SWM, but it was cancelled after this change to residential. Subsequently, U.P. Urban Planning and Development act changed

the land use from 'residential' to 'dumping yard' and conditional NOC was granted on the grounds that no provisions of the MSW (Management and Handling) Rules, be violated/EC would be obtained. As per the Environment (Protection) Act read with the Environment (Protection) Rules, EIA Notification 2006 had been issued to the effect that any new constructions listed in the Schedule thereof cannot be undertaken without EC from the concerned authorities. MSW Management Facility falls under Category 7(i) of the Schedule. Further, every municipal authority is held responsible for implementation of the Environment (Protection) Rules, under which it is mandatory to install landfill gas control system, prevent off-site migration of gases, and protection vegetation. It was the case of the appellant that the proposed SWM plant would contaminate the underground water, and that the EC granted is void for violating the MSW (Management and Handling) Rules, as the use of land was changed to residential, and the original EC granted has been cancelled. Further, it was also mentioned that there was no scope for a buffer zone to be maintained. Additionally, it was also argued that the agreement for implementation of the project itself was void as a case with respect to it was pending before the Supreme Court, and a stay order had been granted. On the other hand, it was the primary contention of the respondents that the application was barred by time.

The tribunal held that the respondent has only argued that the original application is not maintainable, and not the appeal, and therefore dismissed this argument. In any case, the EC was not prominently advertised, and therefore at the time of filing of the O.A., the appellants were not aware of the same, bringing the appeal within the limitation period. Moving to the merits of the case, the tribunal took note of case law wherein it had been laid down that more stringent standards of environmental protection apply to MSW plants, so that no environmental degradation is caused, particularly where large number of residential and institutional areas are in the vicinity. The tribunal had to determine first, whether EC was liable to be cancelled for non-compliance with the MSW (Management and Handling) Rules, and SWM Manual. While the manual requires a distance of 500 metres of the land-fill site from the habituated area, the EC in the present case provided only for a green belt. Similarly, in the name of noise management (directed by the EC), only a 30 feet high wall had been constructed. Further, the buffer zone/planting of vegetation to assist in litter control directed by the EC was impossible because of other constructions permitted in the vicinity in the name of the housing policy of the State. The tribunal also noticed that the EC has completely ignored the aspect of water supply, which was of much concern in the area.

Therefore, the tribunal concluded that the EC was not in conformity with the Rules or the Manual, and was liable to be cancelled. The second question was whether the impugned project was could comply with the MSW (Management and Handling) Rules and the SWM Manual, and the tribunal concluded that such compliance was not possible. Several reasons were cited, but most importantly, it was found that water in the region was being supplied to the habitants of the area through boring, and therefore the plant would certainly contaminate the water table. The third question was whether the impugned plant could be constructed at village Dundahera, Ghaziabad. The tribunal answered it in

the negative, holding that another more appropriate land is available for such plant. It was also considered that the Supreme Court was hearing a petition with regard to solid waste development scheme, under which the Municipal Corporation Ghaziabad was directed to take possession of certain land and proceed with work of MSW Management., but the Municipal Corporation failed to act on the same, as a result of which no further progress could take place for establishment of plant. The fourth question was whether the impugned plant would cause environmental hazards. It was held environment damage would be caused, as methane mixtures in the explosive range can form if landfill gas mixes with air, foul smell would spread due to garbage lying in the disposal place in absence of buffer zone, transportation of solid waste would cause a threat to the local people, and the proposed green protective belt is an 'eye wash', given that it would take atleast 8-10 years to grow while the EC for the project was only for 3 years. The final question was regarding the impact of the Allahabad High Court decision against which an SLP was pending before the Supreme Court (filed by persons concerned with the approval of plan on which cluster of building complexes had come up at village Dundahera), to the present litigation.

The tribunal concluded that the present proceedings have been continued before the tribunal, that the appellants were not party to the other litigation, and that the subject matter of the two/relief sought are different, thereby the appellant is not barred from seeking redressal. Finally, the tribunal held that the Municipal Corporation appeared disinterested in having a dumping yard, they changed the land use from dumping to residential, and even finalized the Master Plan of the township policy for bringing up of housing facilities in the area. Therefore, the EC was quashed, respondents were restrained from dumping Municipal Waste, all dumped waste was to be removed, and the NOC was also quashed and set aside. The appeal was thereby disposed of.

Sri Balaji Nagar Pothu Nala Sangam
Vs.
The State of Tamil Nadu, Department of Environment and Forests, Chennai & Ors.
Application No. 19/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Garbage Dumping, Solid Waste Management
Decision: Dismissed
Date: 19th December 2016

JUDGMENT

This application was filed for a direction to the village Panchayat, Thiruvallore District to remove the illegally dumped garbage in and adjacent to the Venkatanayaken Kulam and to restore the same to its original position and to set aside the order passed by the Tahsildar contending that the disputed land was not 'Kalam' but 'Kulam'

The Respondent 7 filed an affidavit as a reply, wherein it stated that the Panchayat had decided to stop the dumping of waste in the disputed site and had undertaken to clear all the existing garbage within a period of 6 weeks from the date of filling of the affidavit and not dump any garbage without complying with the Solid Waste Management Rules, 2016.

To ascertain the classification of land, the Revenue Authorities were directed to present the original records wherein it was established that the land was, in fact, Kalam and therefore, the order of the Tahsildar could not be set aside. Moreover, in view of the Rules, it was not necessary to set aside that order as any disposal of solid waste could only be in accordance with the relevant provisions of the Solid Waste Management Rules, 2016.

Accordingly, the application was disposed, recording the undertaking given by the two respondents regarding removal of solid waste within 6 weeks and directing the disposal to be done in accordance with the Solid Waste Management Rules, 2016. It was also clarified that the direction to remove the garbage would not disable the Panchayat to proceed with the site in accordance with the Rules.

N. Ramesha & Anr
v.
Karnatak State Environment Impact Assessment Authority & Ors.
Application No. 145/2016 and M.A. No. 252/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Environmental Clearance, NBWL Clearance
Decision: Disposed
Date: 19 December, 2016

JUDGMENT

OA No. 145 of 2016 was filed by the applicants for a direction to Respondents No. 1 to 5 to produce the records pertaining to Environment Impact Assessment (EIA) study, National Board for Wild Life (NBWL) and Environment Clearance (EC) if any, obtained for Surya Nagar, 4th Phase Scheme construction project and declare the project undertaken by the project proponents, Respondents No. 3 to 5 as illegal and not implementable and further to direct the respondents to comply with the provisions of Environment (Protection) Act, 1986, the Forest (Conservation) Act, 1980, the Karnataka Forest Act, 1963, Karnataka Land Revenue Act, 1964, the Water (Prevention and Control of Pollution) Act, 1974 and the EIA Notification, 2006 issued by MoEFCC and also to initiate prosecution against the Respondent No. 3 to 5 for violation of the provisions of the said acts. The Tribunal in the application passed an interim order on 16.08.2016 directing the SEIAA not to pass any orders on the application made by the project proponent. Against the said order, MA No. 252 of 2016 was filed by the Respondents No. 3 to 5 seeking vacation of the said stay order.

The Tribunal agreed with the contentions of the project proponent that the powers of SEIAA to consider and pass order in the application filed before it could not be curtailed by the Tribunal as the SEIAA was competent to entertain applications, consider them and pass appropriate orders. Therefore, if anyone was aggrieved, they were entitled to challenge the order before the appropriate forum. The project proponent (Respondent No. 3 to 5) submitted that they would not proceed with the construction without obtaining all the legally required permissions and sanctions. Thus, based on the said undertaking the applications were disposed of, making it clear that the SEIAA was competent to consider and pass appropriate orders in accordance with the law.

R. Nityanandan
Vs.
State of Tamil Nadu & Ors.
Application No. 188/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Hot Mix Plant, Cultivation, Consent to Operate
Decision: Allowed
Date: 19th December 2016

JUDGMENT

This application was filed with a prayer to direct the District Environmental Engineer of the State Pollution Control Board to pass orders on the applicant's representation and to direct the 4th respondent namely, S. Jothi, SJM Constructions and Contractor to stop proceeding with the illegal hot mix plant in Cuddalore District.

The applicant stated that the hot mix plant affected the cultivation of Casuarina and other crops on his 10 acres of land, adjacent to the plant. Admittedly, the 4th respondent did not have consent to operate and had to adhere to the guidelines framed by the Board.

The 4th respondent replied that it was only after obtaining consent from the board, the unit would start operations and that as on the date, the hot mix plant was not in operation. Accordingly, the application was disposed of with a direction that any application for consent filed by the 4th respondent pending before the Board should be considered strictly in accordance with the guidelines framed by the Board, after taking approval from

the local panchayat and other authorities. It was also clarified that till such consent was obtained, the 4th respondent should not carry on any activities of the hot mix plant.

Accordingly, the application was allowed.

P.S. Muthusamy
v.
The Tamil Nadu Pollution Control Board & Ors
Application No.176/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Sand Stockyard, EC
Decision: Disposed
Date: 19 December, 2016

JUDGMENT

This application was filed by an agriculturalist affected by the functioning of a sand stockyard by the 5th respondent in and around Nanniyur and Ayyampalayam Villages in Karur District. According to the applicant, the stockyard was functioning without Environmental Clearance and the activities in the stockyard caused air, noise and water pollution.

In its Status Report, the Board stated that the stockyard was only a temporary stocking place for the purpose of sand disposal and therefore, did not require EC or Consent. Upon inspection conducted by the District Environmental Engineer, it was found that there had been no complaint so far, regarding the impact on agriculture due to the operation of the stockyard in Nanniyur Village and that the sand stockyard license had also been obtained in favour of the 5th respondent, which was valid up to November 2017.

In respect of the Ayyampalayam Village, none of the 7 river sand stockyards had obtained Consent as they were not permanently installed and were being shifted to a new place. The Ayyampalayam site was found leveled and there was no sign of cutting trees and as on the date of the application, the site had been closed.

In view of the above said facts and on the basis of the Status Report filed by the Board, the application was disposed off as the requirement in respect of Nanniyur had been complied with by the 5th respondent. However, the Tribunal clarified that compliance should continue and the concerned authorities should make proper supervision. With regard to the Ayyampalayam Village, the Tribunal stated that any sand stockyard should not be carried out unless and until license was granted by the concerned authorities.

Wonderseal Packaging
Vs.
The Member Secretary, Maharashtra Pollution Control Board & Anr.
Appeal No. 76/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Plastic Waste Management, Powers of SPCB
Decision: Allowed
Date: 19th December 2016

JUDGMENT

The appellant was engaged in the manufacture of plastic bags and had filed this application to quash the order passed by the Respondent No. 1 (Maharashtra Pollution Control Board) on 11/11/2016 by which the appellant industry was directed to cease its functioning. The power to issue the impugned order was exercised under Section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981. The appellant submitted that it was covered under green category as Small Scale Industry and that it had obtained consent to operate on 20/04/2014 which was valid up to 30/04/2019. It contended that it had neither contravened any provisions under which the consent to operate was issued nor any provisions which dealt with manufacturing, sale and storage of plastic bags. It was alleged that the field officer of the Respondents visited the Industry on 19/11/2016 and submitted report, based on which the 1st Respondent had arbitrarily passed the

impugned order on 11/11/2016. The appellant mainly attacked the legality of action taken under Water Act and Air Act and contended that the direction to close industry was illegal and needed serious review.

The Tribunal dealt with two main issues in the present appeal. First, whether the 1st respondent could have exercised power under the Water and Air Act to issue the order when the allegation is actually of alleged violation of provisions under the Plastic Waste Management Rules, 2016. Second, whether the 1st respondent had power under Section 5 of the Environment (Protection) Act, 1986 to issue orders or directions?

The Tribunal on close reading of Section 33A of the Water Act and Section 31A of the Air Act opined that it was clear that the powers conferred on the Board enabled it to exercise the powers to close the industry but such powers could be invoked by the Board only in the exercise of its functions under these acts and not otherwise. However, in the present case the Board had received complaint about violation of the Plastic Waste (Management & Handling) Rules, 2016 and not contravention of provisions of the Water/Air Act. The Respondent contended that there was no provision under the Plastic Waste Rules to take such action as provided by the Air and Water Act. The Tribunal refused to appreciate such contention as there was no explanation from the Board as to why it had not invoked powers under Section 5 of the Environment (Protection) Act, 1986 which allowed the Board to issue such directions. The Tribunal noted that the impugned order was issued under the provisions of Water and Air Act which made it illegal and was therefore liable to be quashed. Accordingly, the direction of the Respondent to disconnect electricity and water supply to the industry was also set aside. The appellant also sought imposition of cost on the Respondents for illegality in proceedings but the Tribunal failed to find any deliberate misuse of power by the Respondents and therefore did not impose the costs.

Accordingly, the appeal was disposed of without any order as to costs.

Pattancheru Enviro Tech Limited
v.
Telangana State Pollution Control Board & Ors.
Appeal No. 133/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Common Effluent Treatment Plant, Penalty
Decision: Dismissed
Date: 20 December, 2016

JUDGMENT

The appeal was filed against the order of the Andhra Pradesh Pollution Control Board imposing penalty of Rs. 2,32,62,000/- on the appellant CETP for violation of the environmental norms. The appellant company was incorporated for establishing a common Effluent Treatment Plant for treating industrial effluents generated by industries in Pattancheru Bollaram area. The penalty was issued as the appellant failed to comply with the parameters stipulated in the joint action plan prepared by the CPCB and State Pollution Control Board as part of the Supreme Court directions which prescribed the effluent standards for the appellant CETP. The court considering the industrial effluents from the highly polluting industries in the concerned area, made it clear that non-compliance of the conditions stipulated in the action plan would lead to legal action constituting closure of the facility in the interest of public health and

environment. The appellant had originally challenged the order of the Board in the High Court of Andhra Pradesh which was subsequently transferred to the Tribunal.

The appellant challenged the order of the Board on grounds that the appellant was not responsible for violation of the parameters of the inlet effluents and instead they were receiving partially treated effluent from the member industries. It stated that the SC also provided that the outlet parameters were to be fixed only after connectivity was given and as no connectivity was given, no penalty was payable. The case of the appellant was that they were liable to pay penalty only in respect of inlet effluent quantity and not the quantity of the water and sewage that flowed into the CETP and as a result the penalty was required to be re-calculated. It was found that the appellant was not liable for penalty for non-compliance of outlet standards during the period 2007-2008 and therefore pursuant to the orders of the Tribunal, the penalty was reconsidered by the Board vide order dated 27.01.2015 as Rs 84,60,000/- in respect of non- compliance of inlet standards only. However, the said order was also disputed by the appellant by way of a representation claiming that the calculation was not correct and the quantity of outlet has been taken as quantity of inlet. Thus, the appellant calculated the penalty amount as Rs 70,68,000/-.

The Tribunal was of the opinion that the appellant was liable to pay penalty fixed on the basis of joint action plan approved by the Supreme Court at the rate of Rs.300 per KLD for non-compliance of the standards of the inlet and not for outlet. It noted that the Board vide order dated 27.01.2015 had reconsidered the penalty amount in pursuant to the orders of the Tribunal which directed the Board to issue a fresh demand for non-compliance of inlet standards. However, the said order though appealable was not challenged by the appellant which attained finality. Thus, the Tribunal found that the appellant was liable to pay the penalty amount imposed in the said order and dismissed the appeal finding no merit therein.

The Chennimalai Weavers' Co-operative Production & Sale Society Limited
v.
Chairman, Tamil Nadu Pollution Control Board & Ors
Appeal No.35/2016 (SZ)

Coram: Hon'ble Justice N.S. Nambiar, Hon'ble Shri P.S. Rao
Keywords: Textile units, Penalty, Effluent Discharge
Decision: Disposed of
Date: 20th December 2016

JUDGMENT

The appeal was filed against the order of the Tamil Nadu State Pollution Control Board (Board) issued under section 33 of the Water Act, 1974 imposing penalty on the appellant society in terms of the directions of the High Court of Madras passed in the writ petitions which sought prevention of water pollution in Erode District caused by the discharge of effluents from the tanneries and the textile dyeing units. The High Court on considering the submissions made by the Board directed the units to install RO and RMS plants and on failure to so, pay compensation to the Board.

Upon finding that only few of the units were complying with the orders, the High Court appointed a Monitoring Committee which inspected 637 units and divided them in categories. The High Court divided them in 6 categories, which were liable to pay the fine accordingly. (1) Those units who approached the court stating that RO system and RMS

have been provided for the consented/ applied capacity were included in Category 'a'; (2) Those units which were making reduction of production capacity by removing process machines were included in Category 'b';(3) Category 'c', which were units that were seeking time to install RO system and RMS (4) Units which had not applied for/applications not resubmitted were included in Category 'd'; (5) Those units which were willing to switch over for bleaching operations were included in Category 'e' ; (6) Those units which claim to have provided for a different technology like sprinkler system were included in Category 'f'.

The appellant unit which was covered under Category (b) was granted Consent to Operate by the Board and was permitted to discharge 50 KLD of effluent in view of the directions of the High Court, however subsequently it requested the Board to reduce it to 20 KLD as the internal consumption had been reduced and dying processes had become unnecessary because the exporters provided colored threads for the manufacture of export quality fabrics. However, no decision on the said request was taken by the Board and the appellant had to approach the High Court which upon consideration directed the Board to reduce the capacity. However, the Board subsequent to the said order made an inspection of the appellant unit and on observing certain inadequacies imposed a fine of Rs 14,01,000/-.

It was the case of the appellant that the unit had already installed RO and RMS plant and requested the Board to reduce the capacity from 50 kld to 20 kld. However, the penalty amount imposed by the Board was on the consented capacity of 50 kld instead of 20 which was not justifiable. The Tribunal accepted the contention of the appellant unit and held that since it had already made a request to the Board for reduction of the capacity, the Board was not justified in claiming the fine for discharge of 50 kld and therefore held that the appellant was only liable to pay the fine amount for the reduced capacity of 20 kld.

Accordingly, the application was disposed of.

Bolpur Station Road Byabasayee Welfare Samity
Vs.
Subhas Datta & Ors.

MA No. 1265/2016 in OA No. 16/2016 (EZ)

Coram: Justice S.P Wangdi, Dr. P.C Mishra
Keywords: Air Pollution, Noise Pollution, Municipal Solid waste, Plastic waste
Decision: Disposed
Date: 20th December 2016

JUDGMENT

The respondent no.9, the intervener applicant, filed the MA in the abovementioned original application praying for recalling or modification of the orders passed in the OA wherein the Tribunal restricted the Shantiniketan Poush mela held in the Visva Bharti University for three days and prohibited bursting of fire crackers during the Mela. The intervener applicant sought modification of the said directions contending that the same would deprive the respondent from setting up of their stalls thereby adversely affecting their business interest. It was alleged that the original applicant obtained the impugned order by highlighting only a few aspects of environmental pollution caused during the Mela. The applicant submitted that the said directions of restricting the Mela and

prohibiting bursting of firecrackers was contrary to the tradition of the Poush Mela and in doing so the Tribunal has exercised its jurisdiction in excess of the provision of section 20 of the NGT Act, 2010.

The Respondents alleged that the mela is being organized by the Shantiniketan trust with due collaboration of the district administration to ensure effective management of law and order. It was also submitted by the Respondent Trust that the permission for Mela is being granted keeping into account the pollution norms stipulated by the West Bengal pollution control Board. As per the original applicant the mela caused immense environmental pollution, the cause of the same being the bursting of fire crackers, use of DG sets, black generators, indiscriminate disposal of municipal and solid wastes, burning of fossil fuels and indiscriminate use of thermocol and plastic materials etc. The original applicant therefore prayed for not holding the Mela without complying with the environmental norms and to take necessary steps for arresting air and noise pollution and not to use plastic items during the Mela.

The Tribunal observed that the foundational cause for bringing the OA was the environmental pollution caused during the mela. It was also brought to the notice that severe air pollution was caused in 2015 hitting the SPM level 10 times above the safe limit. Further, there was immense dust and noise pollution and increase in plastic wastes leading to environmental degradation. It was found that there was no effective mechanism for management of solid and plastic waste and that the mela continues for 10-12 days even though it is required to be wound up by the 3rd day as per the tradition and the Trust deed. Thus, there was a blatant disregard of the Municipal Solid Wastes (Management and Handling) Rules, 2000 and Plastic Manufacture, Sale and Usages Rules, 1999.

Holding no infirmity in the order, the Tribunal opined that the three-day period should be kept intact and display of fireworks as long as the same do not emit any sound, could be permitted. All other reliefs sought in the MA were found to be misconceived and the Tribunal found no reason to review the case since the orders of the Tribunal nowhere imposed a ban on putting up of stalls in the Mela. Accordingly, directions were given to the intervenor applicant to approach the Trust and Committee for permission to set up stalls which could issue appropriate directions in this regard.

The application was disposed of with no order as to costs.

Subhas Datta
Vs.
Visva Bharati University & Ors

Misc. Application No. 1270/2016 in O.A. No. 16/2016 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Noise Pollution, Fireworks
Decision: Allowed
Date: 20 December 2016

JUDGMENT

This application was filed by the applicant, Shantiniketan Trust (Respondent in Original Application), praying for modification of the Tribunal's orders passed on 4.10.2016 and 15.11.2016 and allowing fireworks display during the annual Poush Mela as per tradition and permitting the Mela to be extended till the fourth day of Poush, as requested by the Mela Committee and visitors. Further, the applicant also requested that the stall owners be allowed to dismantle and remove their stalls in the next 48 hours after the Mela winds up. Finally, they prayed for permission to set up stalls for sale of agricultural tools for the benefit of the farmers and products, public awareness of legal, social and educational

issues, confirming that they would not allow any person to put up stalls to sell electronic goods.

The Tribunal agreed to modify the directions, allowing display of fireworks without any sound and extending the period for winding up the Mela to 48 hours. It further permitted the applicants to allow stalls to be set up for sale of goods for the benefit of farmers and holding awareness programmes and even allowed stalls to be set up for the sale of non-polluting wares such as handicrafts, carpets, handloom etc., along with limited number of food and refreshment stalls. Finally, the Tribunal directed the organizers to ensure strict monitoring of plastic wastes, no use of black generators and DJs, use of only LPG for cooking food in the refreshment stalls and provision of fire extinguishers, to ensure a dust free atmosphere by setting up water sprinklers and provision of sufficient portable toilets.

Accordingly, the Misc. Application was disposed of.

Abhinav Co-op Housing Society Ltd.
Vs.
Union of India & Ors

Application No. 166/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Construction, Eco-Sensitive Zone
Decision: Dismissed
Date: 20th December 2016

JUDGMENT

The application was moved by the applicant, a Co-operative Society, seeking declaration that the applicant was entitled to construct/develop the residential plots as mentioned in the application without restraint. The applicant also sought declaration that its project was beyond the area initially fixed as prohibited zone from the boundary of Sanjay Gandhi National Park in Borivali ["National Park"]. However, when the case was called no one appeared thereafter which, the Tribunal examined the material propositions stated in the application for ascertaining as to whether any purpose would be served in retaining the application on file.

The Tribunal opined that the main contention of the applicant was that its residential project which was proposed to be constructed was not hit by any of the restrictions of the Notification defining eco-sensitive zone in the vicinity of the National Park. However, the Tribunal noted that the MoEF had issued a notification on 05/12/2016 fixing the eco-sensitive zone within the vicinity of National Park whereby restriction was specified clearly. Thus it was for the applicant to determine whether its project/construction activity was within the said prohibited zone and if so, the project had to be frustrated. In case the project was not hit by the Notification, the applicant was to seek relief from the competent authority. With this view, the Tribunal refused to grant declaration that the applicant's project is lawful and not hit by any notification beyond the National Park.

Accordingly, the application was disposed with no order as to costs.

Jai Gurudatta Suppliers
Vs.
Reliance Infrastructure Ltd & Ors.
Application No. 187/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Ash Pond, Construction, Dumping, Thermal Power Plant
Decision: Disposed
Date: 20th December 2016

JUDGMENT

The applicant, a partnership firm engaged in sale of fly ash, approached the Tribunal seeking directions against the Respondent No.1 to allow it to lift ash from the ash pond without any assistance from Respondent No. 2 and to further direct Respondent No.1 to facilitate the applicant to lift ash from the ash pond, free of cost. The applicant also sought compensation and cost of the present application from Respondent No. 1. It was the case of the Applicant that according to the Notification No. S.O. 763(E) issued by the MoEF to protect the environment, conserve top soil and prevent dumping and disposal of fly ash, every construction agency engaged in the construction of buildings within a radius of 100km from a coal or lignite based thermal plant should only use fly ash based products for construction. Further, as per this notification the applicant was entitled to lift fly ash

from the thermal power plant, which was refused by Respondent No.1. The Applicant relied on sub-clause 2(i) of the aforesaid Notification to point out that the Notification does not permit any restriction for lifting of pond ash and it should be made available free of any charge on "as is where basis". The counsel contended that the use of words "as is where basis" meant that Respondent No. 1 cannot restrict who should enter the premises.

After considering the grounds raised by the Applicant, the Tribunal noted that the main issue raised by the Applicant was that words 'as is where basis' meant that generator of fly ash should make free access to category of persons who were entitled to lift without any restriction. The Tribunal mentioned that it was difficult to accept such a proposition and the use of words 'as is where basis' was referred to the quality and conditions of the ash and not the accessibility to the place where it was generated. With regard to the second contentions that there should be free access to the place to enable lifting of ash, the Tribunal opined that the Notification gives right to lift the ash of different types free of cost but to lift the fly ash undoubtedly the security of the place had to be respected and honored. Further, the generator of fly ash cannot create monopoly in favour of any one particular consumer. In case the allegation by the Applicant that Respondent No. 1 had created monopoly in favour of Respondent No. 2 was true, the Tribunal granted leave to the Applicant to lodge complaint with competent authority i.e. the Government against the restriction imposed in favour of Respondent No.2. Also, the Tribunal granted liberty to the Applicant to approach the Tribunal in case the Government did not address its grievances. Accordingly, the application was disposed with no order as to costs.

Opal Builders Pvt. Ltd.
Vs.
Union of India & Ors.

Application No. 186/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Justice Dr. Ajay A. Deshpande
Keywords: Eco-Sensitive Zone, National Park
Decision: Dismissed
Date: 20th December 2016

JUDGMENT

The application was filed by a company engaged in the business of construction and developing properties, seeking a specific relief of granting no objection from the Tribunal for building of a residential project along with a resort in village Ghodbudar, Thane. The Tribunal noted that prima facie the application was not maintainable as the Tribunal was not the statutory authority to grant no objection which was sought by the applicant. However, on perusal of the application it was observed that the claim of the applicant was on the basis of certain note in the notification issued by the MoEF on 05/12/2016 declaring the eco-sensitive zone in relation to the mandate of the Forest (Conservation)Act, 1980 and Sanjay Gandhi National Park. It was the case of the applicant

that the Notification was made subject to the Orders of the Hon'ble Supreme Court, High Courts and the NGT.

The Tribunal opined that it was up to the applicant to examine from the provisions of the Notification to see whether the project was permissible. Consequently, other statutory authorities like Municipal Corporation would be competent to grant or refuse the permission sought by the applicant.

In such circumstances, the Tribunal stated that the application was premature as no order had been passed by any statutory authority to reject the application and the premise on which the applicant had raised the issue seeking direction was misconceived.

Accordingly, the application was dismissed with no order as to costs.

Tony Thomas
Vs.
Ministry of Environment, Forests and Climate Change & Ors.
Application No. 67/2015 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Ordinary Earth, Exemption, Environment Clearance
Decision: Dismissed
Date: 21st December 2016

JUDGMENT

This application was filed to set aside the order in a G.O (RT) No. 12/2014 dated 15.11.2014 which provided that prior permission was not required to use and carry ordinary earth for personal house constructions except flats and to declare that the respondent State had no authority to exempt any activity from the purview of the prior environmental clearance mandated under the Environment (Protection) Act, 1986.

The respondents submitted that the impugned G.O.M was not in force, in view of the amended Kerala Minor Minerals Concession Rules, 2015 (KMMCR) and that the exemption was held invalid, and considering that the Kerala High Court had quashed Rule 14 (2) of the KMMCR.

In view of the same, the Tribunal clarified that the State Government did not have the power to grant exemption from the purview of prior environmental clearance and since the impugned G.O was no longer in force, nothing survived in the current application.

Accordingly, the application was disposed of.

Sri Kamatchiamman Plastics
v.
The District Environmental Engineer, Tamil Nadu Pollution Control Board & Ors.
Application No. 276/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Consent
Decision: Dismissed
Date: 21 December, 2016

JUDGMENT

This application was filed for a direction against the respondent authorities, including the Tahsildar of Kumbakonam, to break open the concerned premises of the applicant for the purpose of making civil and miscellaneous alteration to comply with the recommendations for obtaining Consent from the Tamil Nadu Pollution Control Board. It was observed that the applicant had been running the unit without Consent as well as without any license or building plan approval from the concerned authorities.

The applicant had already moved the appellate authority. The Tribunal was of the view that there was no substantial question of law relating to environment on the factual matrix of this case and even though it was true that the closure of the unit by the Tahsildar

was as per the direction of the Board, it should not only be an issue that comes under the 7 acts enumerated in Schedule I, but should also relate to a substantial issue of environment and thus, the Tribunal was of the view that the Appellate Authority may dispose of the appeal in accordance with the law.

Accordingly, the application was dismissed due to lack of merit, however, it was left open to the applicant to inform the Appellate Authority of any remedy, to obtain the necessary order.

Bidyut Mohanty
Vs.
District Collector, Koraput & Ors.

Original Application No. 78/2015 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Plastic Waste, Air Pollution, Water Pollution
Decision: Disposed
Date: 21 December 2016

JUDGMENT

This application was filed praying direction to the Respondents for taking steps to ban plastic and enforce provisions of the Plastics Waste (Management and Handling) Rules, 2011 in the Gupteshwar temple area in district Koraput, Odisha and issue a notification declaring the said area as a plastic free zone. It further sought constitution of state level advisory committees for effective implementation of the rules and direction to the Pollution Control Board to produce annual and action taken reports. The complaint arose due to the negligence of the Respondents in preserving the mythological and historical importance of the area as well as it's biodiversity as they failed to implement the 2011

rules, allowing use of polythene carry bags, plastic cups and plates, sachets of gutkha, tobacco etc. Furthermore, such waste was incessantly dumped in the nearby Reserve Forest and the Sabari river at the base of the temple.

While taking regulatory steps, the Respondents refuted most of the allegations and submitted that not only had they taken the requisite measures of reducing the use of plastic, employed a monitoring squad and informed the Municipal Corporation of the measures to be taken, but had also initiated incentive schemes for rag pickers and set up action plans and strategies to make the city free of any plastic.

The Tribunal considering the significance of the cave temple being in a reserved forest of rich biodiversity observed that the improper management and disposal of plastic waste will have definite impact on the flora and fauna of the area. The Tribunal also considered the case of Krishan Kant Singh vs. M/s Triveni Engg. Industries Limited, OA No. 317 of 2014 to base their approach on the "Precautionary Principle, which allows placing the burden of proof on the person proposing the activity that is harmful to the environment. In conclusion, it directed the Respondents to implement the provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution Act), 1981 and the Environment (Protection) Act, 1986 and to take immediate steps to prohibit the use, sale and processing of plastic carry bags within the radius of 3 kilometres of the temple area The Tribunal directed for constitution of the advisory committee and the penalty to be decided by the authority under the Plastic Rules, 2016 and filing of a compliance report within three months in the registry from the date of the judgement.

Accordingly, the application was disposed of without costs.

Debadityo Sinha & Ors

v.

Union of India & Ors

Appeal No. 79 of 2014 (PB)

Coram: Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Ranjan Chatterjee
Keywords: Environment Clearance, EIA provisions, Material Concealment, Form I, Public hearing, Vitiated appraisal
Decision: Allowed
Date: 21 December 2016

JUDGMENT

Challenge in the appeal was to the Environment Clearance ["EC'] dated 21.08.2014 granted by the MoEF & CC [Respondent No.1] to the Project Proponent [Respondent No.4, hereinafter "PP"] for setting up a 2x660 MW thermal power plant in District Mirzapur, State of Uttar Pradesh. The appeal was brought by an environmentalist, senior journalist, and student of Environmental Science from Banaras Hindu University [Appellant No. 1, 2, 3 respectively]. It was the case of the appellant that the PP suppressed material facts to obtain the EC, provisions of the EIA Notification 2006 were violated as the public consultation process was inadequate , and certain crucial aspects such as the responses

of affected persons and siting guidelines (availability of unused, uncultivable land, vicinity to railway line for coal transportation, geological/topographical suitability, and absence of major settlements) along with its own observations had been overlooked by the EAC and MoEF & CC. It was argued that the project was considered by the EAC without verifying that the project site was a prime agricultural land surrounded by reserve forests which also required Forest Clearance for its railway line, a material fact not disclosed by the project proponent in its Form I (EC application).

The question before the tribunal therefore was whether the proposal for grant of EC was duly considered by the authorities in accordance with the mandatory requirements of the EIA Notification, 2006. At the outset, the tribunal reiterated that great caution has to be exercised before any developmental activity is undertaken, as protection of environment takes precedence over economic gains.

The tribunal laid down the structure of the EIA Regulations, 2006 as per which for the purposes of grant of EC, projects were categorized into A and B on the basis of potential impacts on health, and resources. For Category A projects like the one in question, scoping, public consultation, appraisal, and final decision on the proposal were identified as steps to be followed. The Expert Appraisal Committee was expected to determine Terms of Reference ["ToR"] at the stage of scoping, and prepare the Environment Impact Assessment Report ["EIA"] for the project for which EC is being sought on the basis of information furnished in the application Form – I/IA. The Tribunal noted that the stage of scoping is of extreme importance as the information provided in the Form I/IA forms the very basis of EIA of the proposed project for its objective appraisal in the next stages. The tribunal took note of the fact that one false information/deliberate concealment has a cascading effect, as the entire mechanism is interconnected. The tribunal held that the EAC is expected to look for other information available outside that provided, and has the discretion to reject the application at the stage of scoping upon the total view of the material before it.

It was argued by the appellant that if the project is not duly appraised on the basis of proper scoping process/Form I, it amounts to a substantial non-compliance of the EIA Regulations. The contention of the appellant was that the consideration of the TOR was not done on the basis of Form I but rather a Basic Information document circulated for the convenience of the EAC. Thus, the scoping process was faulted. However, the respondent argued that Form-I is initiation of the entire process and acts as a guide and cannot bind the EAC. The Tribunal accepted the contention of the appellant by referring to the *S.P Muthuraman case* and held that the provisions of EIA Notification, 2006 are substantive and mandatory.

The Tribunal noted that PP misrepresented/deliberately concealed in Form I that the project site was barren and did not involve any forest land, the tribunal held that the project was surrounded by forest and involved "Parti Bhumi' or 'fallow land' which could not be termed as barren. It was further noted that there was presence of forest within the plant boundary and the approach road, rail and water lines certainly passed through

forest lands, and therefore the PP ought to have revealed such involvement as these were regarded as material components of the project. The Tribunal considering the provisions of the EIA regulations held that where clearances from other regulatory bodies is required, obtaining such clearances is a pre-condition for grant of EC and in the present matter the requirement of forest clearance (Stage-I) was not fulfilled. Further, there was no consideration of the impacts of the project on forest and wildlife presence including Schedule I species in the EIA report. The EAC also overlooked issues regarding the potential impact of water withdrawl from Ganga affecting its ecological flow and also of taking untreated contaminated water from Ganga to upper and lower Khajuri reservoirs (catering to the Banaras Hindu University), and the EAC merely accepted the presentation made by the PP on face value, the tribunal thus, found the appraisal process questionable. The Tribunal noted that the project was proposed in an area having presence of Kaimoor sand stone, a rich mineral resource, the fact which was not disclosed in the Form I.

The tribunal did not find force in the submissions that public hearing was inadequate for the notice was not publicized in the national daily that would had ensured maximum publicity due to readability in the state, as the procedure does not require that the national daily that publicizes the notice be published from a particular place. However, the contention that since the hearing was conducted in the presence of men holding guns, it was not a free and fair hearing was accepted holding the public hearing as illegal.

Since the EC Regulations 2006 lay down a chain of processes to make a complete mechanism required to asses the potential impacts of a project on the environment, every piece of data furnished or collected at every stage was required by the Tribunal to be wholesome and free from misconceptions, as expected by the checks and balances envisaged by the law itself. The process followed in the present case was found tainted for the abovementioned reasons, and the Tribunal directed that the entire process be repeated, thereby setting aside the EC, and prohibiting any development work from being carried out on site alongwith direction to restore the area to its original condition.

The appeal was hence allowed.

Progressive Resident Welfare Association

v.

Haryana Urban Development Authority

Original Application No. 57 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice Raghuvendra S. Rathore, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Non-joinder of parties, Limitation
Decision: Dismissed
Date: 22 December 2016

JUDGMENT

The application was filed against the action of the respondent converting the colony park into residential plots in Sector 23-A in Gurgaon. It was the case of the respondent that the land in question is a vacant land, which had never been used as a park. Further, it was also argued that the case does not involve any substantial question related to the environment, and therefore the application under Sections 14 and 15 of the NGT Act must be dismissed, which in any case was alleged to be barred by time.

The tribunal found that the application hadn't been filed within the ambit of Section 14 of the NGT Act. As per Section 14, the total period of limitation is six months plus sixty

days, which commences from the date on which the cause of action first arises, and in this present circumstance, the application was filed in 2014 when the cause of action had arisen in 2012. Additionally, the tribunal rejected the contention of the applicant that a continuing cause of action gives a fresh cause of action, as a continuing cause of action does not provide a fresh period of limitation in the face of the expression 'cause of action first arose'. The tribunal also took note of the fact that no application had been filed for condonation of delay, and so the question of condoning the delay did not arise. Finally, the tribunal held that the original application could not be entertained as it suffered from non-joinder of parties, as the applicant did not choose to implead those parties to whom the plots had been allotted. Therefore, the application was dismissed.

Mrs. Almitra H. Patel & Anr

v.

Union of India & Ors

Original Application No. 199 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Mr. Justice U.D. Salvi, Hon'ble Mr. Bikram Singh Sajwan, Hon'ble Dr. Ajay Deshpande
Keywords: Municipal Solid Waste, Barman Committee, Segregation of Waste, Ban on PVC
Decision: Disposed
Date: 22 December 2016

JUDGMENT

In 1996, a Writ Petition was filed by the applicant, an environmental conservationist, seeking a writ of Mandamus for improving the manner in which Municipal Solid Waste ["MSW'] [classified as Household/City/Commercial/Industrial/Hazardous waste, and human excreta] generated in various Indian cities was collected, stored, transported, disposed of, treated, and recycled. It was the case of the applicant that there were no uniform national standards/practices to avoid the adverse impact of failure to hygienically manage MSW. It was argued that the issue was neglected for years, despite the power of the Central Government, as well as the State Governments have under

Section 5 of the Environment (Protection) Act, 1986, in addition to their constitutional obligation to prevent environment degradation. The specific problems pointed out in the petition were the absence of a system for storage of waste at source, lack of facilities to deposit waste, existence of unhygienic and inaccessible communal waste storage facilities, loading of waste into open trucks manually, and land filling operations carried out without environmental impact analysis.

During the pendency of this petition, the Barman Committee was appointed to overlook the situation, and also 10 directions were issued by the Supreme Court to ensure the regular cleaning of public premises, prevent encroachment on public land, and selection of sites for compost plants, among other things. State Governments were directed to take expeditious steps in accordance with the law to deal with the menace of MSW, however none of the States implemented and enforced the directions, The Supreme Court in 2014 transferred the petition to this tribunal.

Four aspects required deliberation by the tribunal; first, a ban on short life PVC and chlorinated plastics, second, RDF to Cement Plants, third, Buffer Zone, and fourth, Tipping Fee. It was the case of the applicant that WTE projects be approved only if energy balance, mass balance and water balance was submitted with the initial proposal/formed part of the agreement, no commitment in the agreement be mad for mixed waste/waste of specific calorific value, no unprocessed wet waste recyclables form part of the feedstock, no commitment for guaranteed supply of waste in excess of 85% o their total waste generation as minimizing residual waste is a key objective of SWM, incinerator ash be sent to waste landfill at the operators cost. Further, it was pleaded that all pollution control boards must encourage supply of combustibles as RDP to nearby industries, power/cement plants, and the Union of India must phase out the use of PVC. With respect to creation of a 'buffer zone', the central pollution control board ["CPCB"] claimed to be in the process of preparing 'National Guidelines for Buffer Zone around waste processing and Disposal Facilities' and agreed with the applicant that MoEF needs to look into the Solid Waste Management Rules, 2016 ["SWM Rules"] which define 'tipping fee', as a fee or support price to be paid to the operator of the waste processing facilities for disposal of residual solid waste at a landfill, but do not mention criteria for its application. It was the case of the MoEF that necessary examination needed to be done with respect to ban on PVC, incinerators for solid waste have emission criteria, and Bio-Medical Waste Rules 2016 also provide for phasing out use of plastic bags within 2 years. Ministry also stated that a national and state policy as per the SWM Rules would consider the use of RDF in Cement Plants, and that the issue relating to Tipping Fee would be examined in consultation with stake holders.

The tribunal issued certain directions to deal with the matter at hand. All States and Union Territories were directed to enforce the SWM Rules in all respects, and prepare an action plan for the management and disposal of waste, failing which they would be proceeded against in accordance with Section 15 of the Environment (Protection) Act, and be liable to pay compensation. It was further directed that if any WTE plant was established, the

mandatory and proper segregation prior to incineration relatable to the quantum of the waste must be ensured. Waste-RDF-Energy was described as the preferred choice in WTE plants. In WTE plants by direct incineration, absolute segregation was made mandatory. It was held that a buffer zone must be provided around plants and landfill sites, to segregate the plant by means of a green belt from surrounding areas, to prevent pollution. A discretionary measure was also directed, as per which the project area was also to be beautified. State Governments and local authorities were directed to issue directives making it mandatory for power generation and cement plants within their jurisdiction to buy and use RDF as fuel in their respective plants. Further, it was held that wherever tipping fee was payable to the operator of the facility, it was not only to be relative to the quantum of waste supplied, but also to the efficient and regular functioning of the plant. Proper computerised weighing machines were directed to be connected to the online system of concerned departments and local authorities mandatorily, wherever tipping fee was related to the load of waste. Operators of facilities were directed to segregate inert and C&D waste at the source/collection point, and then transfer it in accordance with the SWM Rules. The Tribunal established that landfill sites be subject to bio-stabilisation within 6 months from the date of pronouncement of the order, that windows be turned at regular intervals, and that generation and leakage of Methane be prevented. Further, landfills were to be used (preferably) only for depositing of inert waste and rejects, and any other waste was to be segregated. Stabilised waste was to be subjected to composting, so that it could be utilized as organic manure. Non-biodegradable waste and non-recyclable plastic was to be segregated from landfill sites, and be used for construction of roads/projects all over the country, and the same was to be mentioned in the contract awarding work to the facility operator. State Governments, Local Authorities, Pollution Control Boards of States and of Union Territories were directed to ensure the opening of centers in every colony of every district to collect/require the deposit of domestic hazardous waste like fluorescent tubes, bulbs, batteries, electronic items, syringe, expired medicines, etc in discharge of Extended Producer Responsibility. Waste so collected was to be sent for recycling, else transported to the hazardous waste disposal facility. With respect to the ban on short life PVC, the tribunal directed the MoEF&CC along with State Governments to pass appropriate directions within 6 months, which were to have prospective effect. A complete prohibition was declared on open burning of waste on lands, including at landfill sites. Any defaulting person was made liable to pay compensation of Rs. 5,000 for burning and Rs 25,000 for bulk waste burning. Data related to functioning of plants/compliance was to be made public on websites by local authorities/operators of the facility. The CPCB and State Boards were directed to conduct survey and research by monitoring incidents of boring, and submit a report with respect to the same. The directions in the case of Kudrat Sandhu v. Govt of NCT Delhi were applied mutatis mutandis to the facts of the case, and all stakeholders over the country. In the Kudrat Sandhu case, disposal of Municipal Solid Waste was considered a primary determinant of a clean environment, which in turn is a fundamental right of the people of India under Article 21, and all authorities were directed to ensure proper collection/transportation/disposal of waste in accordance with the SWM Rules.

Accordingly, in the aforementioned case, several directions were issued, and all hotels, restaurants, slaughter houses etc. were directed to segregate their waste. Finally, concerned authorities were directed to spread public awareness. Thereby, the application was disposed of.

M/s. Gandhimathi Enterprises
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 150/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Packaged Drinking Water unit, Consent to Establish
Decision: Disposed
Date: 22nd December 2016

JUDGMENT

This appeal was filed against an order of the State Pollution Control Board directing the closure of the Appellant's unit of packaged drinking water in Villupuram District, for the reason that the appellant had completed erection work without obtaining 'consent to establish'.

The appellant contended that by carrying on erection work, he was not actually intending to carry on the proposed business activity and that he had also filed an online application for consent, which was filed after the impugned order passed by the Board. Further, the appellant also submitted that he would not proceed with any activities until consent to establish was considered by the Board and appropriate orders were passed.

Recording the appellant's statement, the Tribunal directed the Board to take notice and consider the online application so as to pass appropriate orders. It also directed the appellant to not carry on any activity till the order was passed and directed the Board to ensure the same.

With the above direction, the appeal was disposed of.

M/s. Golden Fish Meal
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Appeal No. 151/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Closure Order, Consent, Effleunt Discharge
Decision: Dismissed
Date: 22nd December 2016

JUDGMENT

This appeal was filed challenging the closure order passed by the Tamil Nadu State Pollution Control Board, on the ground that the Effluent Treatment Plant was not in operation and untreated trade effluent was being transported and disposed.

It was also observed that the Consent granted to the appellant had expired on 31st March 2016 and the application filed for renewal of Consent had been rejected by the Board. Subsequently, the appellant challenged this order before the Appellate Authority, which was pending. During this time, the Board inspected the unit and found it to be operating and discharging the untreated effluent.

The applicant submitted that he did not operate the industry and could not do so, unless consent was renewed. Based on such contentions, the Tribunal found no merit in the appeal and stated that the appellant was entitled to apply for fresh Consent after curing the defects and requested the Board to inspect the industry and pass appropriate orders, with regard to the renewal of consent.

With the above directions, the appeal was disposed of.

Mr. Murugan
v.
The Central Ground Water Board & Ors
Application No. 52/2016 (SZ)

Coram: Hon'ble Justice Dr. P. Jyothimani, Hon'ble Shri P.S Rao
Keywords: Packaged Drinking Water unit, Consent
Decision: Dismissed
Date: 23 December, 2016

JUDGMENT

This application was filed by the owner of Aqua Farms in the name of Thiru Sanganithi Aqua Farms, which produced packaged drinking water under the brand Vasari Drops, Marie Gold, and Olympic Drops since 2009. The applicant contended that the 9th respondent in the name of Gandhimathi Enterprises had been carrying on illegal manufacturing of packaged drinking water and had no obtained consent from the Board for the same.

In a 2016 order, the Tribunal granted an ongoing order of interim injunction against the 9th respondent from manufacturing of packaged drinking water. However, the

respondent, in its reply, submitted that the applicant had not obtained consent either and therefore, he being a violator had no right to level charge against the respondent.

Subsequent to the Tribunal's order, the Board had passed a closure order for the 9th respondent's unit, following which the respondent filed an appeal before the Tribunal. In view of the fact that the 9th respondent's unit had been closed, the Tribunal was of the view that the application must be closed to, stating that the 9th respondent should not carry on any activity till it obtained consent from the Board and that, if the applicant himself had not obtained consent, it was open to the 9th respondent or any other person to take legal recourse in accordance with law.

Accordingly, the application was disposed in the above terms.

Rajiv Chekuri
v.
The Panchayat President, Sithalapakkam Panchayat & Ors.
Application No. 155/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Garbage Burning, Air Pollution, Water Pollution, Solid Waste Management
Decision: Allowed
Date: 23 December, 2016

JUDGMENT

This application was filed for a direction to the respondents to not burn garbage in a residential area under the Tamil Nadu Housing Board, Sithalapakkam Panchayat and to clear the existing garbage, including the scattered waste in the TNHB locality and area adjacent to it. The applicant contended that the 2164 residential plots in the locality had insufficient number of garbage bins placed by the Panchayat and due to the lack of a proper garbage disposal mechanism as provided under the Municipal Solid Waste Rules, large quantities of waste, including plastics was found causing environmental pollution. He also contended that the burning of such garbage, once in a week, caused huge air

pollution and that during the rainy season, the stagnant rainwater due to the blocked drains would mix with the garbage, causing water pollution. Therefore, the applicant prayed for the necessary directions, considering that their complaints to the Village Panchayat had done nothing to implement a proper sanitation method for the residents.

This application was filed when the Municipal Solid Waste Rules, 2000 were in force, which were subsequently superseded by the Solid Waste Management Rules, 2016, which led to drastic change in the concept of disposal of waste. These new Rules define the kinds of waste as well as the duties of waste generators and of local authorities, under Rule 4. It defines waste generator and waste picker under Rule 3 (56) and Rule 3 (58) respectively. The Tribunal categorically set out the responsibilities of the local authorities and Village Panchayats which, amongst many others, include preparation of a solid waste management plan as per state policy and strategy on solid waste management within six months from the date of the notification dated 8th April, 2016, which period was already over. It was contended that the Village Panchayats had been instructed to not burn any garbage as in law, solid waste cannot be burnt either by the local authority or by waste generators or waste pickers.

As the respondents had not prepared a solid waste management plan as provided under the Rules, the Tribunal issued directions restraining the Panchayat from burning solid waste at the streets or at any other place and to dispose it as provided under the 2016 Rules and the respondents were directed to immediately prepare a solid waste management plan as per state policy and the rules, as provided under Rule 15 and if such a plan was not prepared, they were directed to dispose the waste generated only in accordance with the Rules.

With the above directions, the application was disposed of.

Rajakkamangalam Thurai Fishing Harbour Pvt. Ltd.
Vs.
Union of India & Ors
Appeal No. 77 of 2015 (SZ)

Coram: Justice M.S. Nambiar, P.S Rao
Keywords: Fishing Harbour, sand dune area, CRZ area
Decision: Dismissed
Date: 23rd December, 2016

JUDGMENT

The appellants requested the Tamil Nadu Government to construct a Fishing Harbour under Build- Own- Operate- Transfer (BOOT) system and the Government accepted the proposal by G.O. subject to conditions enumerated. The respondent 5 filed a Writ Petition to quash the G.O. While the petition was pending, the MoEFF&CC granted CRZ Clearance to the harbor. Later an application was filed before the Tribunal to revoke the clearance as it was a sand dune area and there were Olive Ridey Turtles' eggs and the writ petition also got transferred to the Tribunal. Based on the Tribunal's decision, respondent 1

cancelled the CRZ Clearance given to the applicants. Thus, an appeal was filed challenging this order.

The appellant sought to set aside the order of cancellation of clearance based on the following grounds:

- The inspection of the project site by the Additional PCCF and Scientist was without notice to the applicant and was violative of the principles of natural justice.
- The order was pre-determined.
- Order was passed without proper consideration of facts involved.

The respondent submitted that the appellant had violated the conditions of the clearance and further submitted that the area was ecologically sensitive and lied between low tide area and high tide area.

After considering the submissions of both the parties and referring to various sources as to what a sand dune is, the Tribunal found that the appellant did not disclose the presence of sand dunes, which fall under CRZ I, at the project site. It found that the appellant had secured clearance by suppressing the existence of sand dunes and turtle nestling area in the project site. Altering, modifying or destructing of sand dunes in CRZ area is a prohibited activity under the CRZ notification 1991 and 2011.

Therefore, finding no merit in the appeal, it was dismissed.

M/s. Thamarai Spinning Mills
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.
Application No. 277/2016 (SZ)

Coram: Hon'ble Justice M.S Nambiar, Hon'ble Shri P.S Rao
Keywords: Consent, Show Cause Notice
Decision: Disposed
Date: 23rd December 2016

JUDGMENT

This application was filed for a direction to the Chairman of Tamil Nadu Pollution Control Board and the District Environmental Engineer of Tiruppur District to issue consent to the applicant under the Air and Water Act, which was to be decided by the State Pollution Control Board. According to the applicant, he had been running his mill for the last 10 years without obtaining consent. Application for consent was filed by the applicant and upon inspection of the mill, a show cause notice was also issued due to certain defects.

The Tribunal was of the view that no direction could be granted in such a case but directed the Board to pass appropriate orders in accordance with law without delay, if the application filed by the applicant was in order

Accordingly, the application was disposed of.

Universal Crescent Power Private Limited
Vs.
Union of India & Ors.

Review Application No. 08/2015
In
Original Application No. 23/2013 (EZ)

Coram: Hon'ble Justice Mr. S.P. Wangdi, Prof. (Dr.) P.C. Mishra
Keywords: Review, TPP, Industrial Park, Lease Agreement
Decision: Allowed
Date: 23 December 2016

JUDGMENT

This review application was filed by the Respondent in the Original Application, against the order passed by the court permitting another Respondent to continue with the ongoing Brackish Water Aqua Culture Development Project at Nayachar Island. The

applicant submitted that the reason for a review arose due to his position as a lessee/sub-lessee of the said area and that the court order went against the lease entered by the applicant for the purpose of setting up a Thermal Power Plant and an Industrial park.

The applicant further argued that if the impugned order were allowed to subsist, it would amount to breach of the lease agreement and go against the rights of the applicant.

After due consideration of the impugned order and the rights of the applicant, the Tribunal agreed that the initial order was a result of an error on the face of the record and that the applicant, being the lessee, stood restrained from taking any steps for construction of its own project due to the order. For such reasons, the Tribunal agreed to review the judgment and the direction allowing the other Respondent from carrying out the Development Project was deleted, thereby allowing the review application without any order as to costs.

Shri Hira Singh Markam & Ors
v.
Union of India & Ors

Appeal No. 83 of 2014 (PB)

Coram: Hon'ble Mr. Justice Swatanter Kumar, Hon'ble Dr. Justice Jawad Rahim, Hon'ble Mr. Bikram Singh Sajwan
Keywords: Forest Clearance, Limitation, territorial jurisdiction
Decision: Allowed on maintainability
Date: 23 December, 2016

JUDGMENT

The appeal was filed against the Forest Clearance dated 23.05.2014 granted by the State of Chhattisgarh to the South East Central Railways (the main Respondent, hereinafter referred to as the "project proponent") for construction of phase-I Dilirajhara-Rawghat Railway line. The appellants had also assailed the Stage –I and Stage-II forest clearances

granted by the MoEFCC for the said project vide approvals dated 16.04.2010 and 12.05.2014 respectively.

The project proposed construction of 235 km long railway line in Bastar District which was planned through reserve forests on the hill slopes and included 83.12 ha of forest land in East Bhanupratppur forest division. The project was planned for three phases, however the present application dealt with the FC granted only with respect to the first phase.

The case of the appellant was that the application made by the project proponent (Form IV) for obtaining the Forest Clearance was devoid of significant information and documents and suffered from patently false and misleading statements where substantial fact with respect to the existence of Adivasis/Tribes in the area and that the entire district being Schedule V was concealed. It was further alleged that the FAC/MoEF had given the approval without due application of mind and verification of the material information and without taking into account the fact that the area in question was sensitive from environment and wildlife perspective which would be adversely affected by the said project. The appellant also pleaded that in absence of an alternative land for compensatory afforestation, no approval for diversion of forest land would have been granted.

The respondents challenged the maintainability of the appeal raising three preliminary objections, first, whether the territorial jurisdiction lie with the Central Zone and not the Principal Bench as the cause of action arose in the State of Chhattisgarh, Second, whether the appeal was not maintainable under Section 16 (e) of the NGT Act on the ground that the Stage-I forest clearance dated 16.04.2010 had been granted prior to the coming into force of the NGT, and third that whether the appeal was barred by limitation for being preferred beyond thirty days from the date of passing of the impugned orders.

The Tribunal without dealing with the appeal on merits, confined the present judgment to the aspect of maintainability. The Tribunal noted that the appellant had challenged the order of the State Government under section 2 of the Forest (Conservation) Act, 1980 passed after the commencement of the NGT Act which is appealable under section 16 (e) and therefore the same is maintainable. The Tribunal then examined the question as to whether while questioning the order of the State Government, the Tribunal can examine the legality or propriety of Stage-1 Forest Clearance passed by the Central Government. By applying the principle laid down in Vimal Bhai & Ors v. Union of India & Ors in Appeal No. 7 of 2012, the tribunal held that the clearances granted by the Central Government forms an integral part and sole basis of the order of State Government, the same could also be assailed and therefore the appeal is maintainable against the Stage I FC also.

On the issue of limitation, the tribunal found that the clearances in question were not uploaded on the website nor published in the daily newspapers or notice board of the local authorities in compliance of section 10 of the FC Act. The Tribunal observed that there must be clear communication of the impugned order for determining the date from

which the limitation period begins to run, and such communication was not clear on the website or any other domain, until the applicants received information under RTI on 11th October, 2014, and thus the appeal was within time. With respect to territorial jurisdiction, the tribunal in view of the judgment passed in Wilfred J v. Ministry of Environment and Forests, OA No. 74 of 2014, held that since one of the order (Stage-I FC) assailed under appeal has been granted by the Central Government, the appeal could be adjudicated before the Principal Bench.

Hence, the appeal was allowed with respect to maintainability and posted for hearing on merits.

Mr. Narhari Krishanji Lingraj
Vs.
SEIAA & Ors.
Application No. 116/2016

Mr. Ramesh Mahadev Bandal
Vs.
SEIAA & Ors.
Application No. 117/2016

Mr. Sadashiv Mahadev Morye
Vs.
SEIAA & Ors.
Application No. 118/2016

Mr. Ashok Bhupal Kurade
Vs.
SEIAA & Ors.

Application No. 119/2016

Mr. Hanumant Bhaskar Talekar
Vs.
SEIAA & Ors.
Application No. 120/2016

Mr. Bhalchandra Bajirao Satam
Vs.
SEIAA & Ors.
Application No. 121/2016

Mr. Mayaji Bapu Gurav
Vs.
SEIAA & Ors.
Application No. 122/2016

Mr. Milind Ramchandra Keluskar
Vs.
SEIAA & Ors.
Application No. 123/2016

Mr. Sahadev Shamrao Chavan
Vs.
SEIAA & Ors.
Application No. 124/2016

Mr. Sadanand Pandurang Mane
Vs.
SEIAA & Ors.
Application No. 125/2016

Mr. Chandrakant Vishnu Pujare
Vs.
SEIAA & Ors.
Application No. 126/2016

Mr. Santosh Eknath Parab
Vs.
SEIAA & Ors.
Application No. 127/2016

Mr. Mahadev Balkrushna Parkar

Vs.
SEIAA & Ors.
Application No. 128/2016

Mr. Pramod Sadanand Kambli
Vs.
SEIAA & Ors.
Application No. 129/2016

Mr. Sanjay Ganpat Pol
Vs.
SEIAA & Ors.
Application No.130/2016

Mr. Vilas Narayan Hadkar
Vs.
SEIAA & Ors.
Application No. 131/2016

Mr. Shailesh Shashikant Parab
Vs.
SEIAA & Ors.
Application No. 132/2016

Mr. Rajendra Pandurang Mane
Vs.
SEIAA & Ors.
Application No. 133/2016

Mr. Narayan Motiram Hindalekar
Vs.
SEIAA & Ors.
Application No. 134/2016

Mr. Sagar Chandrakant Loke
Vs.
SEIAA & Ors.
Application No. 135/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, Abeyance, Non-compliance, Ecologically Sensitive Area, Draft Notification

Decision: Allowed
Date: 27th December 2016

JUDGMENT

The applications raised a common issue related to compliance of earlier orders of the Tribunal as well as the provisions of the EIA Notification, 2006. The applicants were engaged in the business of stone quarrying activities and contended that they had applied for grant of EC to the competent authorities well before the issuance of the directions under Section 5 of the Environment (Protection) Act, 1986 by MoEF on 13.11.2013 which restricted mining, quarrying and sand mining activities in certain areas of Sindhudurg District which were identified as ecological sensitive area ('ESA') in the Western Ghat Region Maharashtra.

The applicants were aggrieved by the decision of the SEAC for keeping their EC applications in abeyance despite the order of the Tribunal dated 17.08.2015 which clearly directed the SEAC to dispose of the applications of the applicants within three months and not to keep the matter in abeyance any further. Thus, the applicants had re-approached the Tribunal to get permission from the respondents to start their stone mining operations contending that the SEAC had failed to take directions on the proposal within three months despite the directions issued by the Tribunal. The reason given by the SEIAA/SEAC was that the said EC applications were of 21 villages which appeared as ESA in the draft notification of MoEF dated 04.09.2015 and decided to keep them in abeyance till finalization of the said notification.

The SEIAA/SEAC submitted that the Government of India had issued a notification on 15.01.2016 amending the EIA Notification wherein the District Level Environment Impact Assessment Authority (DEIAA) had been established for granting EC for mining of minor minerals. It was further submitted that the Government of Maharashtra issued a circular on 02.02.2016 wherein the EC applications which were not considered were to be appraised by the respective district authorities. It was submitted that since the applications filed by the applicants had been appraised by SEAC, they were not remanded back to the district authorities. Further, it was submitted that since the SEAC and SEIAA of Maharashtra were not in operation due to afflux of time of their validity, such applications in absence of the SEAC/SEIAA were to be considered by the MoEF.

Dismayed with the stand taken by the SEAC of keeping 21 applications in abeyance, the Tribunal considered two important facts. First, the fact that the directions of the Tribunal passed in the earlier order of 17.08.2015 were required to be brought to the notice of the Member Secretary, SEAC for execution. Second, the minutes of the SEAC meeting clearly manifested that the decision of the committee was based on the premise that all applications in 21 villages appeared as ESA villages in the Draft Notification above-stated.

The Tribunal pointed out that the EC applications and the directions of the Tribunal were prior to the date of the draft notification and noted that it was a settled legal position that the draft cannot be implemented till it is given finality through an appropriate notification. The Tribunal opined that the EIA Notification,2006 did not contemplate to keep the applications in abeyance and further noted that the role of SEAC was merely recommendatory in nature and the competent authority for grant or refusal of EC was SEIAA. The Tribunal thus withheld the decision of SEAC to keep the applications in abeyance holding the same as *'non-est*'. Further, considering the long pendency of applications, the Tribunal directed the MoEFCC to consider the applications on merit and take a decision in 8 weeks, regardless of whether the SEAC and the SEIAA were constituted in Maharashtra in the intervening period. The Tribunal further issued a show cause notice to the ex-officio member secretary of the SEAC for non-compliance of the directions of the Tribunal issued on 17.08.2015.

Accordingly, the applications were disposed of with no order as to costs.

Sangli Zilha Sudhar Samiti
Vs.
The Commissioner, Sangli Miraj and Kupwad Municipal Corporation, Sangli & Ors.
Application No. 115/2014 (WZ)

Coram: Hon'ble Dr. Justice Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Solid Waste Management, Plastic Waste Management, Air Pollution, Environment Compensation
Decision: Disposed
Date: 29th December 2016

JUDGMENT

This application was filed seeking intervention of the Tribunal to address issues of unscientific dumping of garbage and solid waste as well as associated environmental degradation by Respondent No.1 i.e. Sangli Miraj and Kupwad Municipal Corporation ("SMKMC"). The applicant alleged that SMKMC had been generating large amounts of

municipal solid waste ("MSW") and was regularly dumping garbage and solid waste that also included plastic waste at two locations situated in Miraj Bedag Road Village Waddi and Samdoli Road. The applicant alleged that such disposal of solid waste by SMKMC was in contravention of the Municipal Solid (Management and Handling) Waste Rules, 2000 and the Plastic Waste Rules, 2011 and also caused significant environmental degradation. It was further alleged that in spite of the directions given by Hon'ble High Court of Mumbai in Writ Petition No. 1740 of 1998 and the Maharashtra Pollution Control Board, the SMKMC had failed to tackle the problem of waste management and had engaged in unscientific dumping of waste at both the above referred sites. Following such grievances, the applicant prayed for various directions to be given to the Respondent No.1 and 2 to curb the menace created by unscientific dumping of waste.

The applicant also prayed for directions to strictly enforce the provisions of the Plastic Waste Management Rules 2011, to set up systems for use of plastic waste in road construction/plans for generation of energy, to prevent unregulated open burning of plastic/rubber and to install proper community bins at every 100m distance.

In reply to the application, Maharashtra Pollution Control Board (MPCB) filed an affidavit on 21/05/2015 and submitted that SMKMC generated about 180 tons of MSW per day and that the Board granted authorization to SMKMC under the MSW Rules to set up and operate waste processing/disposal facility at Samdoli, in the year 2003 which was renewed from time to time. However, the board submitted that SMKMC had failed to set up a scientific waste processing plant and no concrete plan for setting up of the same was submitted. Further, the Board also submitted that in the field visits the MSW was found to be dumped at Samdoli and Bedag sites in haphazard manner and in contravention to the provisions of the Rules. The Board also submitted that certain final directions were issued pursuant to the decision of the Hon'ble High Court but in spite of such directions there was no compliance by SMKMC. The Corporation did not contradict the averments put forth by MPCB but contended that they were making sincere efforts to segregate the waste and had gone ahead with developing a proposal in compliance with the MSW Rules for managing the waste generated in the city area. Since the affidavit submitted by SMKMC on 03/02/2015 was devoid of a concrete proposal for such MSW management, the Tribunal directed the respondent to submit a concrete proposal, On failure to submit the same, the Tribunal on 25/03/2015 directed the respondent to deposit Rs. 60 crores in the Escrow account of the Divisional Commissioner (Revenue) Pune division for implementation of such proposal. The Tribunal vide the same order constituted a committee to devise a suitable proposal in this regard. Subsequently, this order of the Tribunal was challenged before the Supreme Court and on perusal the Supreme Court dismissed the SLP and thereby the order of the Tribunal attained finality. Accordingly, SMKMC submitted that they had submitted Rs.40 crore with the Divisional Commissioner for implementation of proposal. Thereafter, the Tribunal constituted a committee consisting of experts to develop a scientific proposal for MSW management with techno economic feasibility.

After much effort by SMKMC and the committee, a detailed proposal was finalized and this was claimed to be a techno-economic solution for sound and scientific MSW management. After perusal of the pleadings, the Tribunal opined that the only substantial issue was regarding early execution of the MSW processing plant to comply with legal action as it was necessary for the growing cities of Sangli and Miraj to have a sound and sustainable MSW Management plant at the earliest. While the applicant was satisfied with the action plan submitted by the respondent, two apprehensions regarding adherence to the time limits and exaggerated costs against certain items in the plan were raised by them. However, the Tribunal did not entertain the second apprehension and directed the applicant to approach the competent authorities to raise grievances regarding the same. With regard to timely implementation of the action plan, it was expected that the plan would be completed by March 2018 but the Tribunal suggested certain re-arrangement and opined that the project could be fully commissioned by December, 2017.

Based on the above discussion, the Tribunal disposed of the application and directed that the action plan be executed by December 2017 and in no case later than March 2018. The tribunal further directed that the amount deposited by SMKMC stood released but the amount was to be kept in escrow account with municipal commissioner and to be spent exclusively on execution of the proposed action plan, with the balance amount after execution to be spent on other environmental projects such as installation of STP and bio methanation plants. The Tribunal appointed a high level project monitoring committee to ensure the time bound execution and commissioning of the proposed plan and directed that regular inspection of waste disposal sites was to carried out by the Board to ensure prevention of environmental degradation.

The Tribunal further directed that SMKMC and MPCB to ensure that residential/commercial constructions with more than 20,000 sq.m. and constructions that had obtained EC, had their own STP and MSW Management plants. The Tribunal directed that SMKMC should ensure strict compliance with the Solid Waste Management Rules 2016 and that all necessary steps to be taken to segregate C&D wastage and dispose it according to the 2016 rules. In case where any builder/developer or person was found to be dumping C&D waste in biodegradable waste collection system, an environmental compensation of Rs. 50,000 would be levied on such builder/developer or person. Similarly, segregation of waste was to be done by major sources of bio-degradable solid waste like hotels and restaurants and in case of failure environmental compensation of Rs. 5,000 would be levied. Finally, SMKMC was directed to ensure that no fire incidents took place at the existing dumping site and to ensure that no open burning of solid waste was done within the city premises and in case of non-compliance the defaulter would be liable to pay environmental compensation of minimum Rs. 5,000.

Accordingly, the application was disposed with no order as to costs.

Sagar Bhaskarrao Wattamwar
Vs.
SEIAA & Ors.
Original Application No. 158/2016

Mr. Atul Labshetwar
Vs.
SEIAA & Ors.
Original Application No. 159/2016

Mr. Vishal Prabhakar Parab
Vs.
SEIAA & Ors
Original Application No. 160/2016 (WZ)

Coram: Hon'ble Justice Dr. Jawad Rahim and Hon'ble Dr. Ajay A. Deshpande
Keywords: Quarrying, Environmental Clearance (EC), Role of SEAC
Decision: Partly allowed
Date: 29th December 2016

JUDGMENT

The present application was filed by the applicants, engaged in stone quarrying activities Kolhapur district, in which they contended that they had given their proposal for grant of EC as per the EIA 2006 Regulations to Respondent No. 2 i.e. the State Expert Appraisal Committee (SEAC) which was fully received in December 2012. The applicants submitted that the Government of India had placed certain restrictions on the grant of EC in consonance of the report of Dr. Kasturirangan Committee related to Western Ghats. Further, the applicants submitted that their applications for EC were considered by SEAC in January and February, 2013 in which it was decided by SEAC not to recommend any new proposals at that juncture. The applicants further submitted that they again applied for EC and mining plan which was approved subject to obtaining necessary EC. The new applications were considered by SEAC in March 2016 in which it was decided to hold these proposals in abeyance till the draft notification of ESA dated 14th September, 2015 was finalized. The applicants challenged this decision of SEAC before the Tribunal.

According to the Tribunal, the scope of these applications was limited as the applicants had not challenged any aspect except the decision of the SEAC to keep the applications in abeyance. The Tribunal noted that in other similar applications it had directed the authorities to take decision on EC applications on merit rather than keeping the applications in abeyance. Further, the Tribunal opined that the SEAC was required to conduct its proceedings as per provisions of the EC Regulations, 2006 which do not contemplate keeping applications in abeyance and the SEAC was not the authority which

could grant or refuse EC. The Tribunal also clarified that the role of the SEAC was only recommendatory and SEAC was required to take a decision either to recommend grant of EC or refusal of EC. The competent authority for grant or refusal of EC was the SEIAA. Thus the Tribunal held that the decision of SEAC to keep the application in abeyance was contrary to the provisions of law and could not be sustained in the eyes of law. Further, the Tribunal opined that the stance of SEAC to keep such applications in abeyance violated the basic mandates of the EC Regulations aimed at sustainable development.

The Tribunal also took note that the SEIAA and SEAC were not in existence due to afflux of time of its validity. Therefore, the Tribunal directed the transfer of all three applications to the concerned EAC of MoEF within the next 7 days to appraise the application on its own merit and take the decision for the grant of EC in the next two months.

Accordingly, the applications were disposed of with no order as to costs.