

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

M.A. No. 286 of 2013 (SZ)

in

Application No. 176 of 2013 (SZ)

In the matter of:

M/s. Ennore Tank Terminal (P) Ltd.,
3rd Floor, P.T. Lee Chengalvaraya
Naicker Maaligai
23, Rajaji Salai
Chennai- 600 001.

..

Applicant in M.A.No.286 of 2013(SZ)
and proposed respondent in
Application No. 176 of 2013 (SZ)

and

1. V.P.Krishnamurthy

.. 1st Respondent in M.A. No.286 of 2013(SZ)
and applicant in Application No.176
of 2013 (SZ)

2. The Union of India
Ministry of Environment and Forests,
New Delhi and others

.. Respondents/Respondents

Counsel appearing:

For the applicant/proposed respondent in M.A. .. Shri P.S. Raman, Senior Advocate

For the respondents

.. Shri A. Yogeshwaran, Advocate for respondent/Applicant
Smt. S. Seethalakshmi, Advocate for R-1and R-10
Ms. M.K. Subramanian & M.R. Gokul Krishnan for R-2
Smt. Rita Chandrasekar for R-3
Shri M. Vijayamehanath, Advocate for R-4 led by
Shri T.R. Rajagopalan, Senior Advocate
Shri R. Senthil Kumar, Advocate for R-5

Shri R. Subramanian and Associates for R-6
Smt. C. Sangamithirai for R – 7
M/s. King and Partridge, Advocates for R-8
Shri M. Devendran, Advocate for R-9

Present:

1. Hon'ble Shri Justice M. Chockalingam, Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran, Expert Member

ORDER/JUDGMENT

Dated: 24th January, 2014

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

This miscellaneous application has been filed by the applicant namely M/s. Ennore Tank Terminal Private Limited for impleading M/s. Ennore Tank Terminal Private Limited as a party respondent in the main application No. 176 of 2013 (SZ). The learned counsel appearing for the respondent herein and the applicant in the main application files objections. The 4th and 6th respondents have already filed their objections.

2. Pending the main application in Application No. 176 of 2013 (SZ) seeking a direction to the 4th, 5th and 6th respondents to shift the pipelines passing through the densely populated area in North Chennai and to discontinue immediately the use of these pipelines and also a direction to these respondents to find a suitable location for laying pipelines in accordance with environmental protection laws and taking into account the preservation of human lives and, flora and fauna and receiving the complaint that the ground water is being contaminated in the said area, the Tribunal took cognisance of the application and on service of notice all the respondents made their appearances and filed their replies.

3. The Union of India was directed to convene a meeting of the Secretaries concerned for the purpose of shifting the pipelines and also to take necessary measures so that the present problem can be solved. Necessary directions were also issued to the Tamil Nadu Pollution Control Board.

4. Pursuant to the directions given by the Tribunal, the meeting was convened by the Secretary and a draft mid-term and long-term plan was placed in the hands of the Tribunal for perusal and for necessary orders. While the matter stood thus, M/s. Ennore Tank Terminal Private Limited filed this M.A. No. 262 of 2013 seeking impleadment as a party respondent.

5. As could be seen from the application in the petition and on hearing the counsel for the application, it is seen that after seeing the newspaper reports as to the contamination of ground water in the surrounding areas and the pollution of the drinking water, there arose a necessity for the applicant to make this miscellaneous application for impleadment. The proposed respondent who made the application is having a public-private partnership with the Government of India and Ennore Port Trust holding 100 per cent equity. It is the first corporatized major port under the Ministry of Shipping and it has got expertise in handling bulk liquid cargo and has all the facilities already established at the Ennore port on a common user basis. It has got adequate infrastructure for the berthing and unloading, pipelines for transportation, storage tanks, etc. Under the circumstances, the applicant is in a position to provide expeditious and readymade solution for the present problem. The respondent companies would be in a position to supply to the distributors directly from the storage tanks of the proposed respondent which is inside the Ennore port. The companies already shown as respondents are yet to get the necessary land allotted in their favour and only then the shifting process could commence which would take considerable time and on any account it may take three years and such a delay could be avoided if the proposal that comes before the Tribunal is accepted. It would also completely eliminate the necessity for transporting of oil through pipelines and the leakage could be stopped.

6. The learned senior counsel would further add that it is true that incidentally it may be seen as a commercial proposition from the point of view of the respondents, but it is not the main object. This application is filed for impleadment mainly from the point of view of the larger interest of the public and hence, the applicant is a necessary party to be impleaded who should be given the opportunity of being heard to solve the present situation and hence, the application has got to be ordered.

7. The learned Senior Counsel appearing for the respondent No. 4 and also the counsel for respondent No. 6, pointing to the original relief sought for by the applicant in the main application and also the averments made in their respective replies would submit that the application itself is not maintainable. It is filed because of commercial interests and the applicant is neither a necessary nor a proper party to the proceedings. The application itself has come at a time when necessary steps have been taken by the respondents to set right the things and when a plan for short and long term has been prepared and filed before the Tribunal for its approval. In the case of the 6th respondent, in response to its request, 100 acres of land has been allotted and the same has already taken possession of the same and the question that is pending before Tribunal is only from the point of view of environment and ecology. Now the request made by the applicant for impleadment is nothing but compelling the respondent industry to get into contract with the proposed respondent which would be outside the scope of the original application, the relief sought for, and apart from that, this would be outside the jurisdiction and powers of the Tribunal. The very reading of the affidavit filed by the applicant seeking impleadment would squarely indicate that it was solely with the object of enlarging the commercial activities and it has nothing to do with the question to be decided by the Tribunal. Hence, the application has got to be dismissed.

8. The Tribunal paid its anxious consideration on the submissions put forth and all the materials made available. After doing so, the Tribunal is of the considered opinion that the request of the applicant has got to be negated for more reasons than one. Firstly, the main application was taken cognisance by the Tribunal from the point of view of environment and ecology when a complaint is put forth as to the contamination of water by leakage of petrol from the pipelines. After appearance, the

respondents have raised all kinds of contentions as to whether there was leakage and if so, who was responsible and thereafter what are the measures to be taken. In appraisal of the circumstances, keeping all the questions kept upon to be decided at the final stage, the Tribunal issued direction to the Government of India to convene a meeting and file the short term and long term plan. Accordingly, a meeting was convened and a draft plan is placed before the Tribunal.

9. It is brought to the notice of the Tribunal that the respondent Nos. 4 and 6 have taken steps for shifting the pipelines and on their request, it is represented by the counsel for the 6th respondent, that 100 acres of land has been allotted and they have taken possession also. While the matter stood thus, this present application for impleadment by the applicant in M.A. No. 286 of 2013 (SZ) has emerged. Admittedly, the applicant seeking impleadment has got a partnership with the Ennore Port Trust and it is an independent entity. Needless to say that the respondent Nos. 4 to 6 are also independent legal entities. If the contention put forth by the learned counsel appearing for the impleading applicant has got to be accepted, it would be asking or directing the respondent Nos. 4 and 6 to enter into contracts between the impleading applicant on the one side and the respondent Nos. 4 and 6 on the other side which would be outside the scope of the question that arose for consideration by the Tribunal. The Tribunal is unable to notice any public interest or larger interest in making such application for impleadment. Admittedly, the applicant has stated that it is also from the commercial point of view.

10. By making the applicant as a party respondent, the Tribunal is of the opinion that the present problem in no way would get solved. It is fairly conceded by the learned counsel appearing for the impleading applicant that though all the facilities are available, it could not meet their entire requirements and could meet only one third of their requirements. Under such circumstances, even if the contention put forth by the learned counsel appearing for the impleadment applicant, that the problem could not be solved cannot be accepted. Apart from all the above, the person who seeks impleadment could not show that he is either a necessary party nor a proper party. The cardinal test to be applied here is that whether the question that arises for consideration could not be effectively adjudicated upon without the presence of the

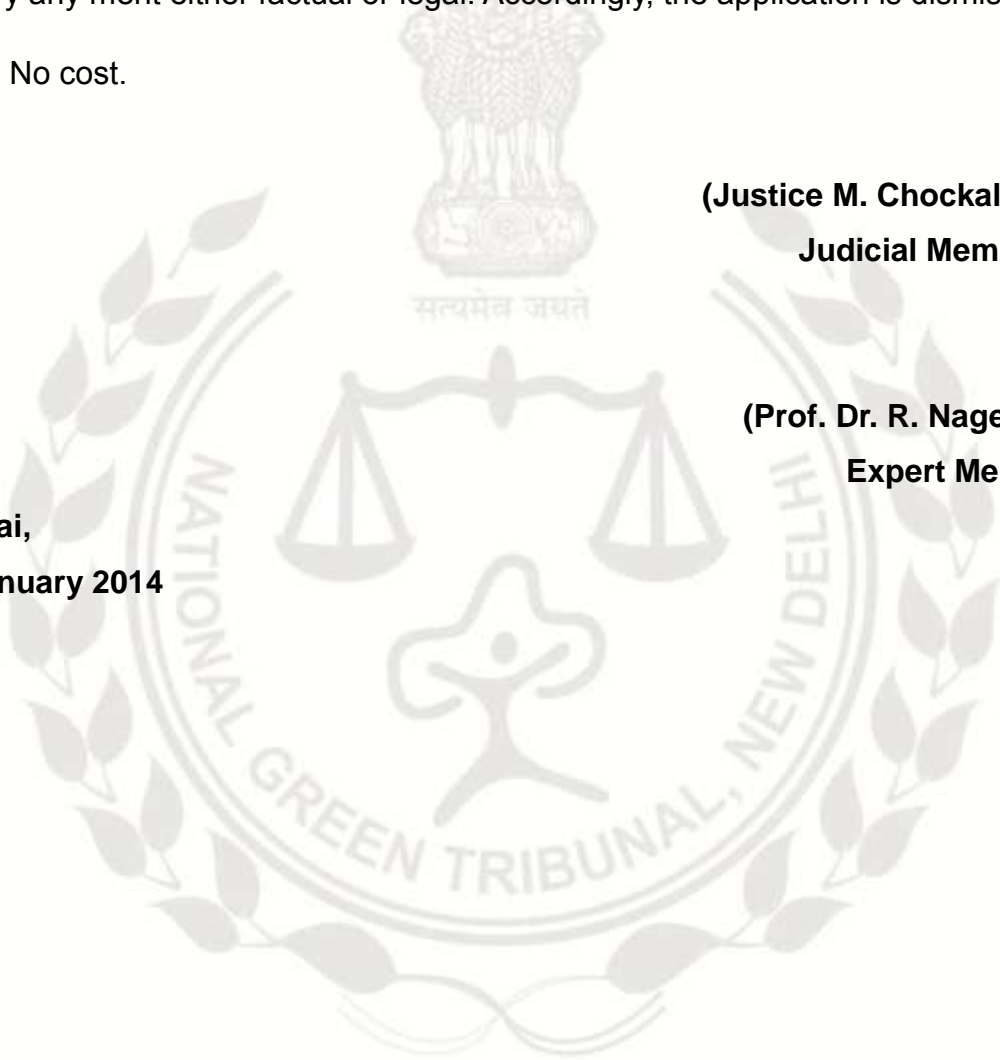
person who seeks impleadment. In the instant case, the presence of the impleading applicant is not necessary to decide the case and on that consideration he is not a necessary party. By all the above, the Tribunal is of the view that the application does not carry any merit either factual or legal. Accordingly, the application is dismissed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai,
24th January 2014



NGT