

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE, CHENNAI.**

**Application No.437 of 2013 (SZ)**

**IN THE MATTER OF:**

1. S. Vishnuvarma

2. S. Suresh Babu

(Both residing at):

Billakuppam Village, S.R. Kandigai Post

Gummidipoondi Taluk,

Thiruvallur District-601 201

... Applicants

Versus

1. M/s. Appollo Distilleries Pvt. Ltd.

(Having Corporate Office at):

Empee Tower,

No.59, Harris Road,

Pudupet, Chennai- 600 002.

Having unit at:

Billakuppam Village, S.R. Kandigai Post

Gummidipoondi Taluk, Thiruvallur District-601 201

2. The District Environmental Engineer

Tamil Nadu Pollution Control Board

43/497 A, Annai Indira Gandhi Road

Rajajipuram Phase II, Thiruvallur- 602 001

3. The Tamil Nadu Pollution Control Board

No.76, Mount Salai

Guindy, Chennai- 600 032

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Respondents

**Counsel Appearing for the Applicants**

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Parties in person

**Counsel Appearing for the Respondents**

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M/s. Taaurs Associates,

Advocates for Respondent No. 1; Shrimati Rita Chandrasekhar, Advocate for

Respondent Nos. 2 and 3.

**ORDER**

PRESENT:

1. **Hon'ble Shri Justice M. Chockalingam**

Judicial Member

2. **Hon'ble Shri P.S.Rao**

Expert Member

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**Delivered by the Hon'ble Justice M.Chockalingam (Judicial Member) dated, 24<sup>th</sup> September, 2015.**

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1. Whether the judgement is allowed to be published on the internet. Yes / No
2. Whether the judgement is to be published in the All India NGT Reporter. Yes / No

This Application is filed by the applicants herein praying for passing an order of permanent injunction restraining the 1<sup>st</sup> respondent company from operating its distillery unit at Billakuppam Village, Gummidipoondi Taluk, Thiruvallur District. Brief facts of the case as per the memorandum of application are as follows:

2. *M/s. Appollo Distilleries Pvt. Ltd.*, the 1<sup>st</sup> respondent company, is functioning within 0.5 km radius from the residential area of their village and produces alcoholic drinks such as beer etc. The village people are confronting with several problems due to the presence of the company as the company is causing air, water and noise pollution. The company emanates an unbearable bad odour due to which the people of the village feel uneasy to breathe. The air pollution is also causing severe health problems like miscarriage, nausea etc., to the pregnant women in and around the village.

3. A small canal is situated on the back side of the respondent company and the waste water discharged from the company is mixed with the water flowing in the canal. Whenever the canal runs dry, the wastewater discharged from the company alone flows through it. Cattle of the villages drink the polluted canal water and suffer from various diseases. An open well nearby the 1<sup>st</sup> respondent company which is used in the summer particularly by the youth to cool off for many a year has been found to be contaminated after the starting of the company. After swimming, itches were felt on the body and also the odour and taste of the

water were similar to that of beer which shows that the ground water is also polluted because of the activities of the company.

4. Sometimes the company generates much noise which would be due to the release of air and this causes serious hearing problems to the residents as many were not able to recognise any sound for some period even after the noise stops.

5. On behalf of the residents of the village, a letter dated 23.06.2013 was sent to the office of the Prime Minister, the office of the Chief Minister of Tamil Nadu and the Central Pollution Control Board (CPCB) regarding the pollution caused by the company. The CPCB and the office of the Prime Minister re-directed the complaint to the Tamil Nadu Pollution Control Board (TNPCB) asking the TNPCB to give priority to the complaint, take necessary action and submit report to the CPCB.

6. The District Environmental Engineer (DEE), TNPCB, Thiruvallur District, seems to have examined the issue and furnished his report dated 13.09.2013. The DEE who is responsible for examining the issue in detail, without doing so, has sought for evidence from the applicants for the contentions made in their complaint letter dated 23.06.2013, in his report. The report has inaccurate statements relating to rain water recharge pond being provided by the company which has been in existence even before the company was started. The report also states about the Corporate Social Responsibility activities which are denied by the applicants as no drinking water is provided by the company in the village and so also the Primary Health Centre.

7. Samples of the water from the canal wherein the company discharges its waste water were given for testing in the Chief Water Analysis Laboratory, King Institute Campus, Guindy, Chennai of the Department of Public Health and Preventive Medicine and the report dated 09.10.2013 states that the water is not fit

for consumption and has got high levels of chemicals. The 1<sup>st</sup> respondent company has not obtained license/approval/permission/certificate, as the case may be, from various statutory authorities as mandated under Para 2 of the Environmental Clearance Regulations, 2006, Rule 7(1), Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (hereinafter MSIHC Rules,1989) and New Industrial Policy,1991 and also that the 1<sup>st</sup> respondent company had not submitted safety report as mandated under Rule 10 (1) of MSIHC Rules,1989 and had not submitted Environmental Statements for the years 2011, 2012, 2013 as mandated under Rule 14 of Environment (Protection) Rules,1986. This information has been ascertained from the concerned statutory authorities under Right to Information (RTI) Act, 2005. The 1<sup>st</sup> respondent company has not complied with the procedure as enunciated under Para.7 (III), Stage (3) and Para. (10) (ii) of Environmental Clearance Regulations, 2006 and the same has been ascertained from the 3<sup>rd</sup> respondent under RTI Act, 2005 and the procedure contemplated under Para (10) (d) of Environmental Clearance Regulations, 2006 has not been complied with which has been ascertained from the Office of the *Panchayat*, Guruvaraja Kandigai.

8. The 3<sup>rd</sup> respondent had granted consent to the 1<sup>st</sup> respondent without verifying the veracity of the statements made by the 1<sup>st</sup> respondent in the application for consent under Sec.25 of the Water (Prevention and Control of Pollution) Act,1974 (Water Act) and under Sec.21 of the Air (Prevention and Control of Pollution) Act,1981 (Air Act) dated 25.01.2010. At Serial No.18 of the application for consent under the said Water Act and at Serial No.15 of the application for consent under the said Air Act, it has been mentioned 'No habitation within 1 km radius' whereas, Billakuppam Village is situated within 0.5 km radius and people are residing within that radius too. The 1<sup>st</sup> respondent company has not complied with the general conditions appended to the Consent

Order No.5409 dated 19.07.2010 and Consent Order No.5349 dated 19.07.2010, issued by the 3<sup>rd</sup> respondent. The 1<sup>st</sup> respondent company had obtained license under Tamil Nadu Prohibition Act, 1937 from Prohibition and Excise Department of Tamil Nadu only after the establishment of the company but not prior to the establishment of the company and the same has been ascertained under the RTI Act, 2005.

9. *Per contra*, the 1<sup>st</sup> respondent denying all the contentions of the applicant would state in reply that the 1<sup>st</sup> respondent unit is a part of the *Empee Group of Industries* and is involved in the activity of manufacturing beer by process of fermentation set out in the name of “*M/s. Appollo Distilleries Pvt. Ltd*”. The unit does not manufacture any other spirit or alcoholic beverage and as such there is no other activity apart from fermentation. The unit is installed with a capacity of 7500000 HL per annum at Billakuppam Village, Gummdipoondi Taluk, Thiruvallur District and is spread in an area of 33 acres with a built up area of 16432 sq.m.

10. The 1<sup>st</sup> respondent company started operating the unit only after obtaining license under the Tamil Nadu Brewery Rules, 1983 bearing No.2/2011-2012. The license of the respondent is periodically renewed and the latest renewal is valid till 31.03.2015. The 1<sup>st</sup> respondent company had commenced the setting up of the said brewery unit only after obtaining valid consents for establishments from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and also consents for operation of the plant under the Air and Water Acts on 31.07.2012 as per Proceedings Nos. T3/F-00784/TNPCB/TVLR/BREW/RL/A/2012 and T3/F00784/TNPCB/TVLR/BREQ/RL/W/2012 respectively, from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and had commenced the operation of the unit subsequently. Further, the manufacturing activity of the respondent unit does not fall within the ambit of

the EIA Notification, 2006 or the MSIHC Rules, 1989. The renewal of the consents under the Air and Water Acts are applied periodically by submitting the required documents and had remitted fee of Rs.505224/- by DD dated 17.02.2014. The unit had obtained No Objection Certificate from the Central Ground Water Authority (CGWA) for extraction of ground water from the Unit premises as per Proceedings No.21-4(177)/SECR/CGWA/2010-1577 dt.03.02.2010. As per the conditions in the said proceedings the unit had set up a rainwater harvesting system in the premises and had subsequently communicated the same to the authorities.

11. The 1<sup>st</sup> respondent company had followed all the required procedures required under the law for setting up of the said unit and had commenced the operation in May, 2012 without posing any impediment to the environment or other persons. There exist no habitations within a radius of 1.5 km from the built up area of this unit and no canals or water bodies exist in and around the unit. The unit has also provided the best effluent treatment system with entire recycling of entire treated water to minimize the extraction of ground water. The effluent from the unit contains only organic compounds and no chemicals can be found in them on any given day. The main organic compounds found in the brewery effluent are sugar, soluble starch etc. The effluent treatment process has two significant steps, i.e. a) aerobic and b) anaerobic which requires only low energy and produces less sludge. The effluent sample from the unit is analyzed by the TNPCB periodically and the latest report of the analysis is dated 06.05.2014.

12. The machinery and equipment in the unit have been selected from reputed companies having name to reckon with in the brewing industry. The unit consists of the following equipment and systems:

- Water treatment plant (Capacity: 75 m<sup>3</sup>/hr) with sand filter, ACF, Softener and RO plant;
- Refrigeration plant: (Screw Compressor 2 × 150 Tr, KC6 2× 120 Tr, KC 41 × 85 Tr and 30 Tr for Glycol);
- Carbon Di Oxide Recovery Plant: (Capacity 300 kg/hr Liquefied CO<sub>2</sub>);
- Air Compressors: (Capacity 3 Nos. 300 cfm);
- Effluent Treatment Plant: (Capacity 950 m<sup>3</sup>/day), Equalisation Tank, Anaerobic Digester, Aeration and Mechanical Evaporator).

13. The unit of the respondent company works on the principles of Biotechnology. The main raw material in the process is the malted barley which the company procures from the leading malt companies in Haryana and Rajasthan. The barley malt is stored in silos in the factory premises and is then cleaned and de-stoned in automated malt handling section. The cleaned malt is then milled in hammer mill and taken to mash kettle for further process. At the later stage after proper fermentation and maturation, a cycle of 15 days, green beer is filtered in the State of the art filtration system and the clarified carbonate beer is stored in bright beer tanks for bottling. The bottling plant consists of bottle washer, filter, pasteurizer, labelling and packer. The company doesn't case any pollution and all the prescribed standards are strictly maintained. On the above grounds, the 1<sup>st</sup> respondent seeks to dismiss the application filed by the Applicant.

14. *Per Contra*, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents denying all the contentions of the applicant would state in reply that the 1<sup>st</sup> respondent unit *M/s. Appollo Distilleries Private Ltd*, located at Survey Nos.: *located at* 70/1&8,777,779,780,781,836,783/5A,5C,6A(P),6C-6L,8A(P),10C,11,12B 12F,785/1,2, Sirupuzhalpettai - II Village, Gummidipondi Taluk, Tiruvallur

District is in existence since April 2012. The unit of the respondent company has obtained Consent to Operate to manufacture 5850 KL/M of Beer as main product and 7 T/m of spent yeast, 1560 T/m spent malt and 3 T/m of carbon dioxide as by-products *vide* Board's proceedings dated 31.07.2012. The unit of the respondent company has obtained letter of privilege issued by the Government of Tamil Nadu *vide* their letter dated 28.03.2012. The unit generates 1.6 KLD of sewage which is treated and disposed through septic tank followed by soak pit. The total water requirement of the 1<sup>st</sup> respondent company's unit is 1092 KLD (1082 KLD for process and 10 KLD for domestic purpose). Out of 1082 KLD for the process, fresh water requirement is only 500 KLD. The remaining 582 KLD is met from recycled water (permeate water from RO plant) and the unit generates 600 KLD of trade effluent for which the unit has provided full-fledged treatment system with zero liquid discharge system consisting of two stages RO plant, two stages thermic fluid evaporator system with agitated thin film drier. Out of 600 KLD, 582 KLD from RO plant as permeate is reused for cooling tower make up, boiler water make up, bottle wash and floor wash. Remaining 18 KLD of RO reject is evaporated in two stages thermic fluid evaporator followed by thin film drier for evaporator concentrate. The Gummidipoondi Block has been classified as 'safe zone' for drawing ground water by the CGWA. The respondent unit has obtained clearance from the CGWA to draw 510 KLD of water from their own land *vide* Lr.No.21-4(177)/SECR/CGWA/2010-1577 dated 03.02.2010.

15. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents further state that the 1<sup>st</sup> respondent company's unit is located at a distance of about 400 m from Billakuppam village and operates a coal/husk fired boiler which has been provided with dust collectors and bag filters with stack arrangement. Consent to the unit has been issued for the period up to 31.03.2013 and issue of renewal is pending for want of ambient air quality survey report. There is no bad odour emanating from the unit as the unit is



manufacturing beer from malt and there are no records of health issues faced by the village people. No treated or untreated waste water is being discharged outside the premises. There exists no possibility of generation of huge noise from the unit as there is no release of air from the plant. The respondent company's unit has provided/ reconstructed the existing rainwater recharge pond of 1500 KL capacity for storage and recharge of surface runoff. The unit has also provided roof top rain water recharge structures. The unit has drilled 10 bore wells for extraction of water and kept one bore well for recharging. The complaint letter forwarded by the CPCB, Zonal Office, Bangalore was investigated and reply was sent *vide* letter dated 13.09.2013. On the above grounds, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents seek to dismiss the application filed by the applicants.

16. As seen above, the applicants who belong to Billakuppam village, Gummidipoondi Taluk, Thiruvallur District have filed this application. The applicants have also produced documents wherein the signatures of hundred villagers are enclosed who are in consonance with the applicant's allegations. Though the applicants filed the application for different reliefs originally, an amendment has been sought for by them seeking for an order of a permanent injunction restraining the 1<sup>st</sup> respondent company from operating its unit on the grounds set out in the application by a Miscellaneous Application No. 124 of 2015(SZ) which was allowed by this Tribunal by an order dated 19.05.2014. After filing of the main application the applicants came to the knowledge that the Project Proponent has been carrying on the business activities without obtaining permission from various authorities under the Rules including the MSIHC Rules, 1989 and through filing under RTI Act, 2005 certain documents have been received by them which was allowed to be filed before this Tribunal by a Miscellaneous Application No. 125 of 2014 (SZ) by an order dated 19.05.2014 of this Tribunal.

## DISCUSSION AND CONCLUSION:

17. On the pleadings, the following questions were formulated for decision by the Tribunal:

- i. Whether the industrial activities of the 1<sup>st</sup> respondent company fall within the ambit of EIA Notification, 2006 and if so, 1<sup>st</sup> respondent company should be restrained from carrying on its operation for not obtaining Environmental Clearance (EC) from the competent authority.
- ii. Whether the activity of the 1<sup>st</sup> respondent company requires prior approval under the MSIHC Rules, 1989 and if so, the 1<sup>st</sup> respondent company should be restrained for not obtaining the prior approval.
- iii. Whether the activity of the 1<sup>st</sup> respondent company requires licence under the Industrial (Development and Regulation) Act, 1951 (IDR Act, 1951) read with New Industrial Policy, 1991 from the competent authorities.
- iv. Whether the 1<sup>st</sup> respondents industry has been causing pollution by letting wastewater outside its premises.
- v. Whether there are habitations, water courses and wells within the prohibited radius of the location of the 1<sup>st</sup> respondent's unit.
- vi. Whether the applicants are entitled to the relief of permanent injunction as asked for and what reliefs, the applicants are entitled to.

18. Advancing the arguments, the 1<sup>st</sup> applicant who appears in person would submit that the applicants are the residents of the Billakuppam village and the 1<sup>st</sup> respondent company, namely, *M/s. Appollo Distilleries Pvt. Ltd.*, which produces alcoholic drinks such as beer etc., is situated within a radius of 0.5 km from the residential area of the village and has been causing different types of pollution such

as air, water and noise enormously. The unit of the 1<sup>st</sup> respondent company has been functioning in full swing from the year 2012 without prior EC from the MoEF, Government of India, as mandated by the EIA Notification, 2006. The fact that the 1<sup>st</sup> respondent company did not obtain EC was confirmed from the reply dated 04.03.2014 received by the applicant under the RTI Act, 2005 which is produced as Document No. 16 (Page No. 53 in M.A. No. 125 of 2014). The activities of the 1<sup>st</sup> respondent company are exactly similar to the activities of the distillery industries. The contention of the 1<sup>st</sup> respondent that though the name of the company is *M/s. Appollo Distilleries Pvt. Ltd.*, the same is not involved in the distillery process and the unit is a brewery which produces beer using the process of fermentation, has to be rejected since the brewery is also a part of distillery industry as per the Technical EIA Guidance Manual for Distilleries Content No. 3.7, namely, industrial processes of various products of distillery industry under which beer production process has also been described. This would be indicative of that the beer production using fermentation process with raw material malt which is derived from a cereal grain usually barley after being germinated for a limited period and dried, is a part of distillery industry. The process described as being carried on by the 1<sup>st</sup> respondent company and the process described for beer production under Technical EIA Guidance Manual for distilleries are one and the same.

19. The 1<sup>st</sup> respondent company is situated on agricultural lands and thus it is not an industrial area/estate which is evident from the reply of the 3<sup>rd</sup> respondent. It is categorically stated that the lands on which the 1<sup>st</sup> respondent company is functioning are classified as agriculture use zone as per the classification of the Directorate of the Town and Country Planning (DTCP). The 1<sup>st</sup> respondent company also did not produce any material to show that they are functioning in an industrial area. For those reasons, the 1<sup>st</sup> respondent company should have obtained

prior EC from MoEF since it is located in an area which is not notified as industrial use zone and the industrial activities of the 1<sup>st</sup> respondent company fall under the distillery industry under Category A in Schedule to EIA Notification, 2006 under Serial No. 5(g).

20. As per the condition imposed in Para 1.9 of the New Industrial Policy, 1991, if the investment is below Rs. 500 million, EC need not be obtained. But, the same is not applicable to the 1<sup>st</sup> respondent company since the investment is above Rs. 500 million as per the certificate of the Chartered Accountant of the 1<sup>st</sup> respondent company and it also falls under the distillery category. Apart from that, the industrial activities of the 1<sup>st</sup> respondent company find place in the list of 29 projects in the Notification issued under the Environment (Protection) Act, 1986 (EP Act, 1986). But, the 1<sup>st</sup> respondent company is carrying on its operations from the year 2012 onwards without obtaining prior EC. Thus, it would be clear that the 1<sup>st</sup> respondent company is illegally carrying on its activities in violation of law. Hence, it has got to be restrained.

21. The applicants relied on the following decisions which according to them would lend support to their above contentions:

*i. Gajubha (Gajendrasinh) Bhimaji Jadeja and others v. Union of India and others in W.P (PIL) No. 21 of 2013 dated 13.01.2014 of the Hon'ble High Court of Gujarat at Ahmedabad.*

*ii. Kehar Singh, Narkatari Village, Haryana v. State of Haryana and others in Application No. 124 of 2013 dated 12.09.2013 of the Principal Bench, National Green Tribunal (NGT), New Delhi*

22. The applicants would further submit that the 1<sup>st</sup> respondent company has been involved in the activities of manufacturing beer whose chemical name is

Ethyl Alcohol (Ethanol). The boiling point and flash point of Ethyl Alcohol are 78.37<sup>0</sup> Celsius and 9<sup>0</sup> Celsius, respectively. It falls under the category of very highly flammable liquids as per Part-1(b) (iii) of Schedule I of MSIHC Rules, 1989 as the boiling and flash points of Ethyl Alcohol satisfy the condition mentioned therein. It is pertinent to point out that the Ethyl Alcohol is notified as a hazardous chemical under Serial No. 248 of Part-II of Schedule I of MSIHC Rules, 1989. Thus, the product of the 1<sup>st</sup> respondent company, namely, beer satisfies the criteria laid down in Rule 2 (e) (i) of MSIHC Rules, 1989 and thus it is a hazardous chemical. Under Rule 7 of the MSIHC Rules, 1989, for undertaking such an activity, prior approval is mandatory. Equally, under Rule 6 of MSIHC Rules, 1989, rules 7 to 15 shall apply to the industrial activities involving hazardous chemicals if the quantity of the chemical is equal to or more than the quantity specified in the entry for those chemicals in Column Nos. 3 and 4. The quantity described for every highly flammable liquid under Column No. 3 of Schedule 3 to MSIHC Rules, 1989 is 1500 tonnes. But, as per the project report filed before the Tribunal in Annexure II as Document No. 18, the working capacity of the unit tanks is mentioned as 2.100 HL x 20 Nos. Therefore, the total working capacity of all the 20 tanks is 42,000 HL. Since 1 HL is equal to 100 litres, the total capacity would be 4200000 litres. One tonne is equal to 1018.3 litres and hence the working capacity when converted into tonnage, it would be 4125.7 tonnes which would satisfy the threshold quantity of column 3 of Schedule 3 of MSIHC Rules, 1989. Hence, the 1<sup>st</sup> respondent company should have obtained prior approval under MSIHC Rules, 1989 from the Chief Inspector of Factories. But it was not done so. Even without obtaining any approval, the 1<sup>st</sup> respondent company is carrying on the operations.

23. Equally, the 1<sup>st</sup> respondent company should have obtained license under IDR Act, 1951. Every industry listed in the First Schedule to the said Act requires

a license under the Act to establish any industrial undertaking. The 1<sup>st</sup> respondent company is a fermentation based brewery industry which has been listed at Serial No. 26 of the list of industries in the first schedule and hence the 1<sup>st</sup> respondent company should have obtained license under Section 11 of the said Act. However, as a result of liberalisation, privatisation and globalisation in the year 1991, the License Raj had been abolished and New Industrial Policy, 1991 was enacted confining the list of industries requiring license to only 6. The provisions of the New Industrial Policy, 1991 contain a list of industries for which industrial license is compulsory and those industries are:

- i. Distillation and brewing of alcoholic drinks.
- ii. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- iii. Electronic aerospace and defence equipment; all types.
- iv. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.
- v. Hazardous chemicals.
- vi. Drugs and pharmaceuticals (according to modified Drug Policy issued in September, 1994).

24. Commencing production before obtaining any one of the above industrial licenses is an offence under Section 24 of IDR Act, 1951. But, the 1<sup>st</sup> respondent company has not obtained the industrial license which is mandatory under the said enactment and as per the New Industrial Policy, 1991 and on that ground it has to be restrained and necessary action has to be taken against the 1<sup>st</sup> respondent company.

25. Addressing further on the issue of pollution, the applicants would submit that the 1<sup>st</sup> respondent company has been letting wastewater outside its premises. The 1<sup>st</sup> respondent company has also dug an artificial lengthy ditch in its land parallel to the natural water course and allows wastewater to flow into the ditch. The 1<sup>st</sup> respondent company has cleverly connected the ditch with the natural water course using a small piece of plywood board which is visible in the photograph produced by the applicant. That apart, the wastewater overflows and mixes with the natural water course. Aggrieved over all sorts of pollution being caused by the 1<sup>st</sup> respondent company, the applicants addressed a letter dated 23.06.2013 to the 2<sup>nd</sup> respondent complaining about the same. Since they did not take any action, the applicants took samples of water from the water course, well and the stream for analysis and a test report dated 09.10.2013 was received which would be clearly indicative of water pollution. Apart from that, the chemical analysis reveals that the given open well water is mineralized, hard and contains excessive bicarbonate alkalinity of 684 mg/l and also contains Nitrate Nitrogen of 15.0 mg/l. The Oxygen absorbed value is 18.4 mg/l and Nitrite Nitrogen is also present which indicated the organic pollution and biological decomposition of nitrogenous organic matter. Pointing to Section 24 (1) of the Water Act, 1974, the applicants would submit that the water pollution caused by the 1<sup>st</sup> respondent company is in violation of Section 24 of the Water Act which is a criminal offence under which a person is liable to be sentenced. In the instant case, the 1<sup>st</sup> respondent company is knowingly allowing the wastewater to mix with the natural water course. In so far as air pollution is concerned, everyone in the families in the village was affected by the bad odour emanating from the 1<sup>st</sup> respondent company.

26. The Tribunal, by its order dated 15.07.2014 had directed the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to make an inspection and file a report. But the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have filed the reply by attaching a copy of the inspection report on the inspection

carried on 13.09.2013 which was earlier to the institution of this application. Hence, the said report cannot be acted upon.

27. Assailing the consent granted to the 1<sup>st</sup> respondent company by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, the applicants would submit that the 1<sup>st</sup> respondent has furnished wrong particulars to the 3<sup>rd</sup> respondent in the application for granting consent stating that no habitation is located within 1 km radius. Apart from that, the consent originally granted in favour of the 1<sup>st</sup> respondent company came to an end on 31.03.2013. The 1<sup>st</sup> respondent company has not applied for renewal of consent under Water and Air Acts for the past one year. Under the general condition appended to the consent order issued to the 1<sup>st</sup> respondent company by the 3<sup>rd</sup> respondent, it was specifically stated that the 1<sup>st</sup> respondent company should make an application for the grant of fresh consent at least 60 days before the date when the earlier consent order came to an end. But in the instant case, even according to the 1<sup>st</sup> respondent, it has applied for fresh consent after 1 year and hence in view of violation, no renewal of consent can be granted to the 1<sup>st</sup> respondent company.

28. There are villages located within 1 km radius from the location of the 1<sup>st</sup> respondent company. Mainly, the Billakuppam village is located within 500 m from the 1<sup>st</sup> respondent company. Even if the built up area of the company is taken for calculation, the village is located within 650 m. In its reply, the 3<sup>rd</sup> respondent has also confirmed this fact stating that the distance between the company and the Billakuppam village is less than 500 m. Apart from that, the 3<sup>rd</sup> respondent in the consent order dated 31.07.2012 has imposed a specific condition to get the reclassification of the site from agriculture use zone into a special and hazardous zone within 60 days from the date of the said consent order. In its compliance report filed by the 1<sup>st</sup> respondent company, it is stated that the company has applied for reclassification of the land use and the same is in final stage with the



Government. Thus, the said condition was also not complied with. It is not known as to how the agriculture use zone can be converted into a special and hazardous zone when number of villages are located within 1 km radius. If done so, it would cause irreparable damage to the flora and fauna and agricultural activities carried out by the village people. That apart, there are about 15 wells, 4 rainwater recharge ponds and 2 small water courses (streams) within 1 km radius from the 1<sup>st</sup> respondent company. The agriculturists of the villages are depending on those water sources. In view of extraction of groundwater by the 1<sup>st</sup> respondent company for its production, many wells in the villages have dried up with not even a single drop of water due to the presence of the 1<sup>st</sup> respondent company. Water is not available in wells and bore wells for carrying on agriculture. Thus, in the instant case, there is absolute violation of the right to clean environment included in the right to life and personal liberty guaranteed to the citizens under Art.21 of the Constitution of India.

29. Thus, the applicants have brought forth this application seeking for clean environment and ecology and to carry out an unexploited environment and ecology to the upcoming generations on the Principle of Sustainable Development which is against the development at the cost of environment and ecology. In order to strengthen the contentions, the applicants relied on the judgement of the Hon'ble Supreme Court of India in *N.D. Jayal and another v. Union of India and others* (2004) 9 SCC 362. Hence, for the reasons stated above, the Tribunal has to grant the reliefs as prayed for.

30. The learned counsel appearing for the 1<sup>st</sup> respondent in her sincere attempt of assailing all allegations made against the 1<sup>st</sup> respondent as recorded above placed her submissions. Equally, the learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents also put forth her submissions. After hearing the initial submissions by both sides,

the Tribunal thought it fit to appoint an independent agency in order to ascertain the factual circumstances in respect of pollution in canal, pollution of ground water, open wells and other water bodies alleged to have been caused by the respondent industry as well as the distance of water bodies and applicants' village from the respondent industry and also to make an analysis of the water content and file a report and in that view appointed a Committee consisting of a practising advocate and also an expert who is a Professor of Environmental Chemistry, Centre for Environmental Studies, Anna University, Chennai to make an inspection and conduct survey taking into consideration of observations made and file a report. Accordingly, the Committee appointed by the Tribunal filed a combined report after serving copies to the applicants as well as the 1<sup>st</sup> respondent. Both sides were given an opportunity to make their written remarks/objections thereon. The applicants filed their written submissions on the report of the Committee while the counsel for the 1<sup>st</sup> respondent company would submit they have no remarks to offer. Statements were recorded. Further arguments were heard.

31. The Tribunal paid its anxious consideration on the submissions made and also had a thorough scrutiny on all the materials made available and of the combined report of the Expert Committee and remarks made thereon.

32. As seen above, it is a pleaded case of the applicants that the 1<sup>st</sup> respondent, *M/s Appollo Distilleries Pvt. Ltd.* who produces alcoholic drinks such as beer etc has been functioning from 2012 without prior EC from the MoEF& CC, Govt. of India as mandated by the EIA Notification, 2006. The applicants aver that the 1<sup>st</sup> respondent should have obtained prior EC from the MoEF&CC since the industrial activities of the 1<sup>st</sup> respondent fall under the Distillery industry under Category A in Schedule II (e) of EIA Notification, 2006 under Sl.No.5 (g).

On the contrary, it is contended by the 1<sup>st</sup> respondent that the 1<sup>st</sup> respondent is not involved in any distillery process and the unit is a brewery which produces beer using the process of fermentation. Pointing to Content No.3.7 of the Technical EIA Guidance Manual for distilleries namely industrial process for various products of the distillery industry the applicants would submit that the beer production process is also described therein wherefrom it could be seen that breweries are also a part of the distillery industry and the same would be indicative of the fact that the beer production using fermentation process with raw material malt which is derived from a cereal grain after being germinated for a period and dried as a part of the distillery industry and thus, the process carried on by the 1<sup>st</sup> respondent and the process described for beer production under the abovementioned Technical EIA Guidance Manual for distilleries are the same. On the contrary, the industry would contend that the activities of the 1<sup>st</sup> respondent would not fall under the category of 5(g) of distilleries. After consideration of the submissions made, the Tribunal has to necessarily disagree with the applicants that the 1<sup>st</sup> respondent industry should have obtained prior EC from the MoEF&CC since it falls under the category of 5 (g) of distilleries of the A Schedule. If the industrial activities no doubt fall under the category of distilleries in Category A of the EIA Notification,2006 the 1<sup>st</sup> respondent should have obtained the EC as per the mandatory requirement under the notification but in the instant case it is not so. It is well settled principle of law that the intention of the legislature has to be primarily gathered from the language used in the statute thus paying attention to what has been stated as also to what has not been stated. When words employed are clear and unambiguous the golden rule of interpretation namely applying the literal meaning has to be done. It is true that the 1<sup>st</sup> respondent is named as *M/s Appollo Distilleries Pvt. Ltd* but it is pertinent to point out that it is not included in the distillery process. It is specifically averred in the application that the 1<sup>st</sup> respondent is producing beer and thus it is purely a

brewery unit. The applicant cannot be allowed to interpret the word distillery to include brewery since distillation and fermentation are two different processes followed for production of two different products namely spirits and beer respectively. The intoxicating liquor is a subject falling under the statute making powers of the State as per Schedule VII, List I of the Constitution of India. The State of Tamil Nadu has framed regulatory laws separately and has framed the Tamil Nadu Distillery Rules, 1981 and the Tamil Nadu Brewery Rules, 1983. The ordinary meaning of brewery according to the Oxford English Dictionary, 2011 Edition is *'a place where beer is made commercially* while distillery is defined as *'a place where spirits are manufactured'*. According to the P. Ramanatha Aiyer's Law Lexicon, 3<sup>rd</sup> Edition, 2012, the meaning of Brewery is defined as: *A brew house; an establishment in which the process of brewing is carried on. Brewers collectively; also applied to beer-trade.* Distillery is found as: *A place or building where alcoholic liquors are distilled or manufactured; distilling establishment. Works where distilling is carried on.* The Tamil Nadu Distillery Rules, 1981 defines distillery as: *"Distillery" means premises in which molasses or other fermentative bases are subjected to alcoholic fermentation and the fermented products are recovered by a process of distillation.* Under the Tamil Nadu Brewery Rules, 1983, *"brewery" means a building or place where beer is manufactured and includes every place therein where beer is stored or where from it is issued.*

33. From the above, it would be quite clear that the distillery and brewery would involve activities under two different processes which are even regulated by two different rules. Hence, the contention put forth by the applicants that the process carried on by the 1<sup>st</sup> respondent company for beer production and the processes followed by the distillery industry are the same has to be rejected. The applicants cannot be allowed to interpret the EIA Notification, 2006 a statutory one with the aid of Technical EIA Guidance Manual for distilleries which

is for distilleries alone. The manual relied on by the applicants is only a guidance to apply and process EIA clearance. It is not in controversy that the 1<sup>st</sup> respondent industry is carrying on its operation of beer production and falls under the definition of brewery as stated above and cannot be construed as a distillery as envisaged under Project/Activity 5 (g) distilleries in Category A of the EIA Notification, 2006. This point is answered accordingly. Therefore, the EIA Notification, 2006 is not applicable in this case and EC is not necessary.

34. According to the applicants, the 1<sup>st</sup> respondent company should have obtained prior approval under the MSIHC Rules, 1989 from the Chief Inspector of Factories since the product of the 1<sup>st</sup> respondent company namely beer would satisfy the criteria for a hazardous chemical as laid down in Rule 2 of the MSIHC Rules, 1989 and hence for the production of same for undertaking any such activity, a prior approval is mandatory and Rules 7-15 shall have an application to the industrial activity of the 1<sup>st</sup> respondent in view of the quantity of the product produced. In answer to the above, it is contended by the 1<sup>st</sup> respondent that those rules have no application to the industrial activities of the 1<sup>st</sup> respondent. A perusal of the MSIHC Rules, 1989 would reveal that nowhere beer is shown as a hazardous chemical. The contention of the applicants is based on the assumption that beer is ethyl alcohol. The learned counsel for the 1<sup>st</sup> respondent industry pointed out that the presence of alcohol in beer is only 4 - 7% as a result of the fermentation process and the remaining is largely in the nature of water contents. He further pointed out lot of characteristic differences between beer as a liquid and ethanol.

**Ethanol:**

- Boiling Point- 78.5 °C.
- Flash Point 9°C.

- Is highly inflammable.

**Beer:**

- Boiling Point around 100 °C as water.
- No Flash Point.
- Not inflammable.

Thus it could be seen that there is a vast difference between the characteristics of beer and ethyl alcohol and hence so long as beer is not shown as a hazardous chemical no necessity could arise for the 1<sup>st</sup> respondent to obtain prior approval under MSIHC Rules, 1989.

35. Equally, it was contended by the applicants that the 1<sup>st</sup> respondent before commencing the operations of the industry should have obtained the industrial license under Sec.11 of the Industries (Development and Regulation) Act, 1951 since it is shown in Sl.No.26 of industries in the Schedule I. Under the provisions of the New Industrial Policy, 1991 certain industries are issued with license before commencing their activities and the activities of the 1<sup>st</sup> respondent would also fall within the categories mentioned therein and hence industrial license is compulsory. Without those licenses which are mandatory, the 1<sup>st</sup> respondent industry has been carrying on their operation which is in violation of law. The above contentions are worth to be ignored for the simple reason that the Industries (Development and Regulation) Act, 1951 and the New Industrial Policy, 1991 are with respect to permission and revenue collection. Neither they have anything to do with environment nor are they listed in the Schedule to the NGT Act, 2010. The contention put forth by the applicants' side is that in order to avoid multiplicity of proceedings it becomes necessary to consider the plea that the respondents' contentions do not merit any acceptance. Those contentions are

neither connected nor concerned with any of the questions on environment and ecology much less substantial in nature too. Hence, that point is answered accordingly.

36. The case of the applicants is that the 1<sup>st</sup> respondent company is situated within a radius of 0.5 km from the residential area of the village and has been causing all kinds of pollution such as air, water and noise enormously which has led to unbearable health hazards. The 1<sup>st</sup> respondent has been letting waste water outside the premises and has also dug a lengthy artificial ditch in the land within their premises and has allowed the waste water to flow from the unit into the natural water course situated parallel outside their premises by connecting the ditch by using a small piece of plywood board. The overflowing waste water always mixes with the natural water course. Since, no action was taken by the authorities the villagers had collected samples from the water course, wells, streams and sent them for analysis. The chemical analysis clearly indicated the organic pollution and biological composition of nitrogenous organic matter. Thus everyone in the village was affected from the odour emanating from the 1<sup>st</sup> respondent company. Pointing to all the above, the applicants assailed the granting of permission in favour of the 1<sup>st</sup> respondent company without application of mind and also pointed out that the consent originally granted to the 1<sup>st</sup> respondent came to an end on 31.03.2015. It is the further case of the applicants that there was no consent available or renewal thereafter and hence it has got to be termed as illegal operation of the activities by the 1<sup>st</sup> respondent. The villages are located within 1 km radius from the location of the 1<sup>st</sup> respondent company and thus it is also a violation of the guidelines. Apart from that, in the instant case, an agriculture user zone has been converted into a hazardous zone wherein number of villages are situated within 1 km radius. On the above grounds, the 1<sup>st</sup> respondent ought to be injuncted from carrying on his activities.

37. While flatly denying all the above contentions, it is pleaded by the contesting respondent, 1<sup>st</sup> respondent company that its activities commenced in May, 2012 after obtaining all the required consent in accordance with law and they are periodically renewed. No habitations are located within the radius of 1.5 km from the premises of the 1<sup>st</sup> respondent industry. It is not correct to state that no channels/water bodies exist in and around the unit. The unit has provided the best effluent treatment system and the recycling of treated water to minimize extraction of ground water is also done. The effluent from the unit contains only organic compounds and there were no chemicals at any point of time. The main organic compounds in the brewery effluent are only sugar, soluble starch etc. The effluent sample was taken by the TNPCB and analyzed periodically even in the month of March, 2014. The latest report was given in the month of May, 2014. The respondent industry has got all preventive machinery and equipments to control pollution and thus all the allegations of pollution made by the applicants are unfounded. While the applicants and the contesting 1<sup>st</sup> respondent industry put forth their respective cases as recorded above, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents brought forth a specific plea as well candidly admitted that the 1<sup>st</sup> respondent obtained Consent to operate to manufacture 5850 KML of beer as main product and also by product dated 31/07/2012. The respondent company is situated at a distance of 400 Km from Billakuppam village. The unit has provided a full fledged treatment system with Zero Liquid Discharge for treatment and disposal of trade effluents. The consent was also extended for a period up to March, 2013 and issuance of renewal was pending. Neither bad odour is emanating from the unit manufacturing beer nor was any treated/untreated waste water being discharged from the premises. It was also contended by the TNPCB that there was no possibility of generation of huge noise as there is no release of air from the plant. The respondent company has provided and reconstructed the existing rain water recharge pond for



storage and recharge of surface run off. The unit has drilled 10 bore wells for extraction of water and has kept 1 bore well for recharging.

38. In view of the controversy between the parties as noticed above, the Tribunal was of the view it was fit that an independent agency to be appointed in order to ascertain the factual position in respect of the alleged pollution in the canal, open well, ground water and other water bodies as well as the distance of the water bodies and the applicant's village from the 1<sup>st</sup> respondent industry and also to make an analysis of water content and file a report. For that purpose, a Committee consisting of a practising advocate and also an expert who is a Professor of Environmental Chemistry, Centre for Environmental Studies, Anna University, Chennai was appointed to make an inspection and conduct survey on terms of reference issued and file a report.

39. Accordingly, the Expert Committee after making an inspection on 25<sup>th</sup> July, 2015 after serving notice and in the presence of the applicants and also the respondents along with their respective counsels made the study and survey on the terms of reference with the following directions and submit the report:

- (i) To inspect and ascertain the factual position in respect of the pollution in the canal, pollution of ground water, open well and other water bodies reported to have been caused by the respondent industry as alleged by the applicant;
- (ii) To assess the distance of the above water bodies and the applicant village from the respondent industry; and
- (iii) To make an analysis of the water content.

It would be apt and appropriate to reproduce the following part of the report:

**Appollo Distilleries Treatment Plant**

*From the consent order issued by TNPCB dated 31.07.2012 and produced by the company for our perusal, we find that the company manufactures Beer (5850000 Litre /Month) by closed fermentation technique. The effluent will mainly contain organics (BOD&COD). The treatment process consists of screen chamber, oil and grease removal, equalization tank, primary clarifier, USAB, secondary clarifier clariflocculator, chlorine contact tank, softener, Ultra filtration, micron filtration, RO (two stage) and evaporator. This treatment system is capable of ensuring Zero Liquid Discharge (ZLD) with reuse of water recovered in RO (if properly operated). The RO reject is evaporated and the residue is stored in shed.*

**Water bodies around M/s Appollo Distilleries Private Limited factory site**

***Catchment area***

*We noticed a catchment area on the Eastern side of the premises where according to the company representative, the rain water is allowed to be drained. It was informed that the same was being utilized to recharge the ground water around the factory area.*

***Canal***

*We noticed a canal of about 200 m distance on the eastern side of the factory premises. The canal runs close to the outer boundary of the factory premises. At the time of inspection the canal was found with water closer to the factory are but the channel passage was broken from a distance. The canal was found to be dry when we proceeded to check the upstream level except in a few places where we found some stagnated water.*

*The applicants who were present complained that water is found in the canal only in areas closer to the factory premises while the entire village was dry. The company representative informed us that due to rain during the last few days water has collected in the canal and in a few surrounding areas. The path of the canal could not be traced beyond a pint or to the upstream level. There seems to be no proper de-silting of a canal in the recent past. Some villagers present along with the applicants explained that the canal is known as “Paramatu Vaikal”. We took samples at three different places in the path of the canal viz., (a) East of the company premises (b) West side/ upstream about 150 metres from the factory premises and c) 100 metres from the compound wall of the factory facing the Southern side i.e. North Western side of the company premises.*

*The TNPCB officials also took another set of the same samples for testing. The applicants and some villagers who were present at the site at the time of inspection repeatedly stated that all water from the factory gets drained only to this canal and one cannot find water anywhere in village to the level found in this canal.*

### ***Bore well***

*We were informed that there were about 10 numbers of bore wells within the factory premises having a depth in the range of 160-180 feet. The company representative produced a letter dated 03.02.2010 issued by the Central Ground Water authority for drawal of ground water at the factory premises. The company has also applied for renewal of permission to the State authorities for renewal on 06.07.2015. The company has also produced a bore well drawl details to us.*

*About 3000 metres across the factory site there exists a bore well near the burial ground in the village. We were informed that the water is available at about 150 feet depth. The water sample that was taken and tasted from the bore well appeared normal and there was no smell indicating influence of alcohol or fermentation process.*

### ***Open well***

*We found three open wells in the village within 500 meters radius of the factory premises and one of the open wells is situated at the entrance of the house of one of the applicants Mr.Suresh Babu. All the open wells were completely dry at the time of inspection.*

### ***Pond***

*We found a pond at the distance of about 300 metres from the factory site on the eastern side which was also found dry.*

On physical verification, the Committee has observed the distance to the village was 500-600 m from the factory site.

40. During the inspection, both the Expert Committee and the authorities representing the TNPCB have taken water samples from the canal (surface water body) and the analysis reports are incorporated by the Expert Committee and the TBPCB in Annexure 4 and Annexure 5 respectively. It is pointed out by the Expert Committee that the test results of waters samples would indicate the contamination of organic matter (COD) was high. The comparative reports submitted by NABL lab and TNPCB in respect of organic impurities found is as follows:

NABL Analysis (mg/l)			TNPCB Analysis (mg/l)			
	COD	BOD	TSS	COD	BOD	TSS
C1	148	18	10	112	8	64
C2	58	8	6	40	3	14
C3	201	24	136	80	5	44

Commenting upon the high contamination of organic matter, the Expert Committee has observed as follows:

*“Generally COD of surface water bodies should be less than 20 mg/l for unpolluted water bodies as per Economics Commission for Europe(EU/75/440/EES) and 10 mg/L as per water quality standard of WHO(1993). All the three samples collected here exceeded the normal value of 20 mg/l of COD as per the NABL lab report and also the TNPCB test results. This clearly indicates that there is contamination of organic matter. The contamination may be due to many reasons like:*

*(a) Natural material contamination because of water contact with dead herbs or*

*(b) Due to any discharge from the factory that has probably leached during rains.*

*The water samples collected were light yellow in colour indicating the presence of organic impurities like polyphenols. However, on physical inspection, we were unable to trace the source of contamination to any visible discharge points from the factory. We asked the applicants to show any particular discharge points where effluents may be discharged into the canal. However, the applicants were not able to pinpoint any contamination point except stating that the contaminants flow out of the factory during rains and mix with the water in the canal and other surface water bodies.”*

41. The Expert Committee while concluding the report has pointed out that *M/s. Appollo Distilleries Pvt. Ltd.* is presently having a system to treat effluents and achieve Zero Liquid Discharge (ZLD). Hence, at present the allegations made by the applicants complaining of letting the treated and untreated effluents and waste water outside its premises cannot be accepted though, the applicants have come with the case stating that the 1<sup>st</sup> respondent company had dug an lengthy artificial ditch parallel to the natural water course and allow the waste water into the ditch which is connected to the natural water course outside their premises using a small piece of plywood board. It is pertinent to point out that the Committee has categorically stated at the time of physical inspection that the Committee was unable to trace the source of contamination to any visible discharge points from the factory and the applicants were unable to pinpoint any contamination point or discharge point where the effluents might be discharged into the canal. It was also noticed that the open wells and ponds near the factory site in the village were found dry.

42. The water samples collected were light yellow in colour indicating the presence of organic impurities like polyphenols. Though all the three samples collected exceeded the normal value of 20 mg/l of COD as per the NABL lab report and also the TNPCB test results, it lends credence to the submissions made by the applicants on the report of the Expert Committee that from the comparison of the Water Analysis results it is found that organic impurities in the upstream (sample marked as C2) are less for all parameters mentioned therein in one way or other. Whereas organic impurities found in the downstream (sample marked as C1) and canal's closest point to the industry (sample marked as C3) are in excess than that of sample C2. The analysis of both the samples, one collected by the Expert Committee which was referred to NABL lab and the other collected by the TNPCB

more or less indicate the same position. As per the NABL analysis report the sample C3 collected at the closest point to the factory shows highest levels of COD, BOD and TSS compared to the other two samples taken at C2 and C1. This clearly indicates that there is more contamination with organic matter at point C3 followed by C1. As per the opinion of the Expert Committee the contamination may be due to the reasons like (a) natural material contamination because of water contact with dead herbs or (b) due to any discharge from the factory that has probably leached during rains. Thus it is clear that there is a possibility of causing pollution by the unit and the Expert Committee has not given a clean chit to the respondent industry. In our considered opinion, if the presence of organic substances and consequent high levels of BOD, COD and TSS are attributed due to the external organic matter contamination then the result of the analysis of all the three samples should reveal the same fact or the result of all the three samples should be more or less similar but it is not so. There is a large in the result of the upstream water analysis (Sample C2) than the rest of the two points i.e. downstream (Sample C1) and the closest point to the factory (Sample C3). Therefore we feel that the contention of the applicants that it is obvious that the water in the upstream in the canal is not polluted whereas water at the closest point to the industry and the downstream is polluted and this has to be attributed to the activities of the industry, can't be brushed aside. It requires a serious thought. It clearly indicates that there is a possibility of discharge of waste water containing organic impurities into the canal by the 1<sup>st</sup> respondent company. It may be true that at the time of inspection by the Expert Committee they were not able to pinpoint any discharge from the factory and locate any contamination point. But the Expert Committee could not give any plausible reason as to why the samples collected closer to the factory and downstream are having higher levels of COD, BOD and TSS than at point located upstream of the factory except stating that "*due to any*

*discharge from the factory that has probably leached during rains".* The Counsel for the 1<sup>st</sup> respondent company when asked whether they have any objection on the report of the Expert Committee replied that they have no objections and they agree with the report. This goes to show that the 1<sup>st</sup> respondent has got no answer to justify the higher levels of contamination in Sample C3 followed by C1 without attributing it to the activities of the factory. One more point which goes in favour of the applicants is that at Page No.9 of the Expert Committee report it has been mentioned that the representatives of the company informed the Committee members that water found in the canal is because of rainfall and it is not due to the effluent discharged from the factory. And if that is the case the point to be considered is here is why the stagnant rain water contains higher levels of organic impurities in samples C1 and C3 and not in the sample C2. If the water found in the canal from which all the 3 samples are drawn, is really because of rainfall then the result of all the three samples should be as similar as possible.

43. Further, the submissions made by the applicants on the report of the Expert Committee that surface water analysis should be compared and correlated only with standard range of parameters of surface water as the water samples are collected from surface water body i.e. canal and the same should not be compared and correlated with industrial samples has force but the end result will be the same irrespective of the samples collected from surface water or industrial discharge the standards are beyond the prescribed limit more so in the samples collected from the nearest point to the factory and downstream.

44. At the time of inspection by the Expert Committee the open wells were completely dry. Therefore, no samples could be collected. But the records placed before us show that the analysis of the water collected from the open well dated on 01.10.2013 i.e. one year after the commencement of the operations of the factory



by the Chief Water Analysis laboratory, Department of Public Health and Preventive Medicine, Guindy, Chennai indicated excess bicarbonate alkalinity of 684.00 mg/l, nitrate nitrogen 15.00 mg/l as well as organic pollution and bio-decomposition of nitrogenous organic matter and the water is not fit for human consumption. This also strengthens the allegation made by the applicants' that the ground water also got contaminated due to the operations of the respondent factory.

45. Further, the record placed before us reveals that the respondent company has not obtained permission from the State Government for drawing the ground water though it obtained NOC from the CGWA and started drawing such huge quantity of ground water to the tune of 510 m<sup>3</sup>/ day by digging 10 bore wells in the agricultural zone which is yet to be reclassified into an industrial zone. The contention of the applicants that after the factory came into being the water in the open wells as well as open water bodies such as village ponds got polluted and have also gone dry, requires serious consideration as CGWA while giving NOC dated 03.02.2010 has imposed the following two conditions among others which apparently leads us to believe that by drawing such huge quantity of ground water by digging 10 bore wells there is a possibility of decline in the levels of ground water in the vicinity.

**Condition No. 2:** *"The bore wells to be fitted with water meter by the industry at its own cost and monitoring of ground water abstraction to be undertaken accordingly on regular basis, at least once in a month. The groundwater quality to be monitored twice in a year during pre-monsoon and post-monsoon periods".*

**Condition No. 5:** *"The firm at its own cost shall install piezometers at suitable locations and execute ground water regime monitoring programme in and around the project area on regular basis to keep a close watch on water level trends for taking suitable measures to keep water level under controlled conditions, in consultation with the Central Ground Water Board, South Eastern coastal Region, Chennai".*

46. It was also mentioned in the NOC that the ground water monitoring data in respect of aforesaid conditions at S. No. 2 & 5 to be submitted to Central Ground Water Board, South Eastern Coastal Region, Chennai on regular basis at least once in a year. This clearly indicates that caution has to be exercised while drawing the ground water and if there is any adverse effect on the water table the authorities have to take action either directing the company to reduce the production in the unit or go for an alternate source for procuring the required water. The NOC issued by the CGWA has thus put conditions as a precaution and it is not a blanket permission granted to the company to continue to draw such huge quantity of ground water in such agricultural zone where the villagers depend on agriculture for their livelihood. The respondent company nowhere in their reply or in the additional reply has stated that they are following the aforesaid conditions imposed by the CGWA and are submitting the reports on a regular basis. Neither the TNPCB has stated anywhere in their reply that the 1<sup>st</sup> respondent company is following the aforesaid conditions imposed by the CGWA. As contended by the applicants only after the application was filed in the Tribunal, the 1<sup>st</sup> respondent company has applied to the State authorities for renewal of NOC for drawing the ground water.

47. One more important point raised by the applicants is that the industry has not submitted annual environmental statements for the years 2012-2013 and 2013-2014 as required under rule 14 of the Environment (Protection) rules 1986. Only after the issue was raised by the applicants in the application filed before the Tribunal, the 1<sup>st</sup> respondent company has submitted the Annual Environmental statements on 17.04.2014 in a bunch.

48. In the above circumstances while deciding the Question No. iv formulated under Para 17 *supra*, we have come to the conclusion that though the

Expert committee report does not categorically give any direct evidence of the respondent industry causing pollution by discharging untreated effluents into the adjacent lands as well as into the water bodies the water analysis results stated *supra*, give a credence to the allegations made by the applicants. Therefore one has to conclude that though the respondent industry has stated that they have taken precautions and made the unit a ZLD unit, in our opinion the water analysis results indicate that there is a possibility of pollution of water because of the activities of the industry.

In the case of *Vellore Citizen Welfare Forum v. Union of India* 1996 (5) SCC 647, under Para 11, the Hon'ble Supreme Court observed:

*"11. Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*

*(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*

*(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

(Emphasis supplied)

*(iii) The "Onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign."*

49. We are conscious of the fact that at the time of inspection by the Expert Committee there is no concrete evidence linking the pollution of the water to the discharge from the unit and no definite opinion has been given in that behalf by the Expert committee. However, as held above, the only plausible reason that appears

to us is as a result of clandestine discharge of the untreated waste either in the past or even at the present the water analysis results gave higher levels of pollutants in the samples taken in the canal at the points located nearest to the unit and downstream. On the basis of the above we feel the respondent industry has to bear responsibility on the Polluter Pays Principle. Section 20 of the National Green Tribunal Act, 2010 empowers the Tribunal to take into consideration the Principle of Sustainable Development, the Precautionary Principle and Polluter Pays Principle while passing any order or decision or award. However, we restrain imposing any penalty at present as the issue requires further study.

50. Therefore we feel ends of justice will be met only by issuing the following directions:

(i) We direct the Government of Tamil Nadu to carry out sample surveys with the assistance of TNPCB and with the help of the CGWA and get the water samples collected both in the open wells and bore wells and also in the water bodies where surface water is stored/dealt with such as ponds and canals in the vicinity of respondent industry and analyzed at least for a period of 1 year from the date of this judgment covering all the seasons in a year and initiate remedial measures if required to be taken at the cost of the respondent industry.

(ii) Secretary, Prohibition and Excise, Government of Tamil Nadu to examine whether there is any depletion of ground water in the vicinity of the factory after the unit started functioning and take action whether to renew the licence or not or even if renewed, whether with reduced capacity depending on the position and if found that this water intensive respondent industry is not only responsible for water pollution but also depletion of ground water because of drawing such huge quantity of ground water. Periodic opinion of the CGWA

shall be taken into account whether the unit can be allowed to continuously extract such huge quantity of groundwater in the agricultural zone at the cost of livelihood of villagers who are mainly dependent on agriculture. No doubt industries are required for Nation's development but it should not be at the cost of the livelihood of the local people and at the cost of the environment. Further, he is directed to examine the issue of reclassification of the site from agriculture use zone into a special and hazardous zone which is supposed to be completed within 60 days from the date of the consent order dated 31.07.2012 issued by the 3<sup>rd</sup> respondent as per the specific condition imposed in the said consent order.

(iii) The Collector, Thiruvallur shall take action to ensure that the respondent company implements the CSR activities in accordance with law.

(iv) However, for the time being taking into consideration of the overall situation and based on the report of the Expert Committee the following suggestions made by the Expert Committee which in the considered opinion of the Tribunal, have got to be incorporated as conditions by the TNPCB while considering the application made by the 1<sup>st</sup> respondent industry for renewal of consent and monitor strict compliance of the same in the future.

- a) *The company must maintain a proper and scientifically designed sludge bed to dry the sludge generated.*
- b) *The sludge can be disposed by accepted management practices after thoroughly assessing its character for manure or as a fuel.*
- c) *General house-keeping of the company needs to be monitored periodically by the Board along with some surprise inspection in order to ensure that the ETP and other mitigation measures are fully operational all the time. The Energy meter reading at the factory may be periodically checked to confirm that the ETP is fully utilized and operational.*
- d) *There should be improved monitoring of any surface water discharge.*

*e) The odour generated during manufacturing process has to be periodically monitored including surprise visits to the factory to assess any adverse impact on the health of the people in the surrounding areas.*

*f) Detailed study on ground water availability and withdrawal of water by all the industries in the vicinity of the village may be taken up by the TNPCB and future course of action may be decided.*

51. In appraisalment of the facts and circumstances of the case, the Tribunal is of the considered view that it is a fit case to grant liberty to the applicants to approach the Tribunal for necessary reliefs, if so warranted, on the strength of the report to be made after the survey and analysis is taken up by the authorities as pointed out in para. 50 (i) and hence liberty is granted. While recording its appreciation on the steps and efforts taken by both the applicants in their endeavor for filing this application after collecting vast amount of data and materials, the Tribunal is of the considered view that the respondent industry should be directed to pay a cost of Rs. 1 lakh to each of the applicants within a period of 4 weeks herefrom and it is ordered accordingly.

52. In the result, the application is disposed of with the above directions to the State of Tamil Nadu as stated in para. 50 (i), (ii) and (iii) and also directions to the TNPCB as stated in para.50 (iv).

53. A copy of this judgement shall be directly sent by the Registry to the following authorities for compliance.

- i. Chief Secretary to the Government of Tamil Nadu.
- ii. Secretary, Prohibition and Excise, Government of Tamil Nadu.
- iii. District Collector, Thiruvallur District.

- iv. Regional Director, Central Groundwater Board, South Eastern Coastal Region, Chennai.



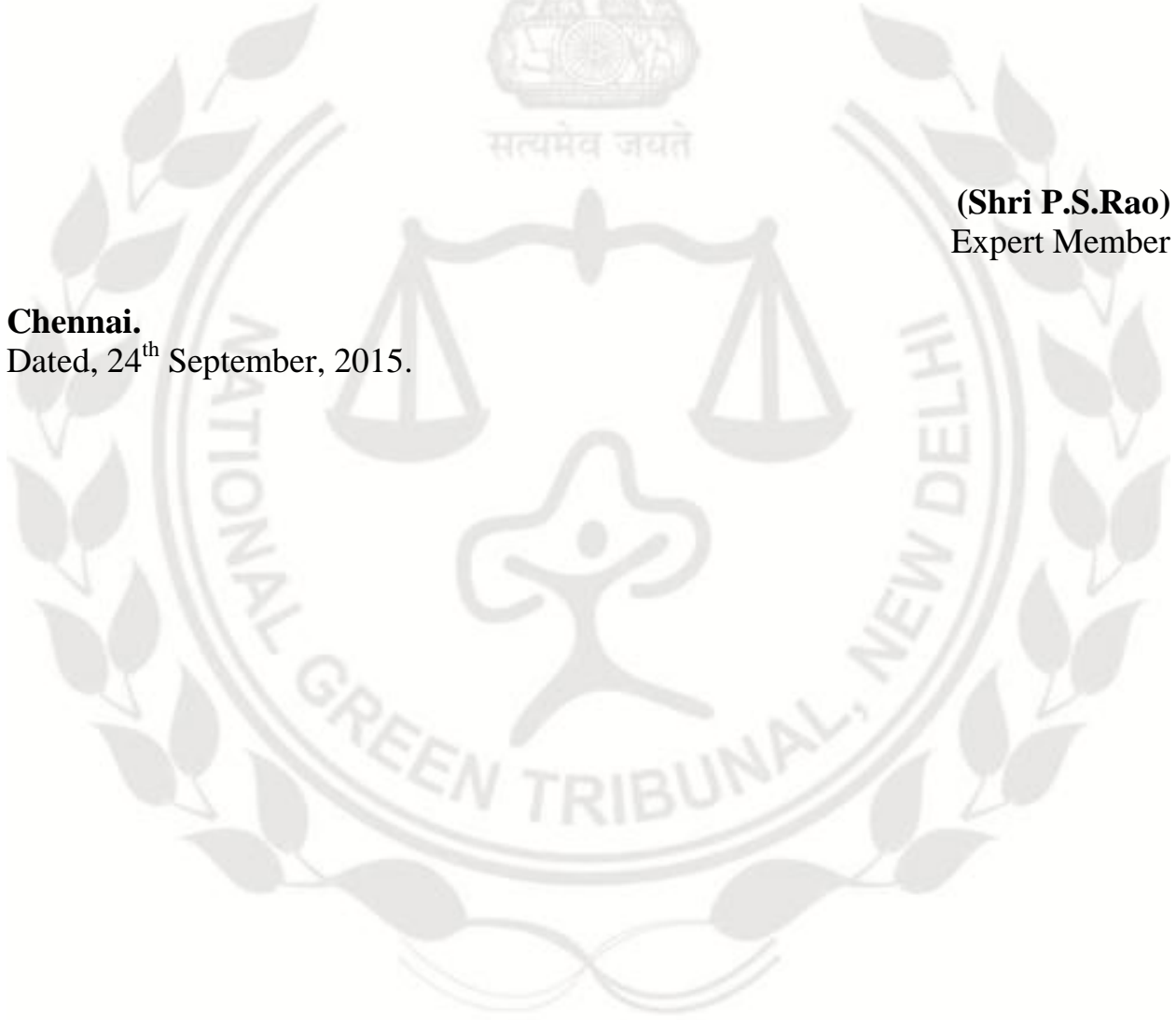
सत्यमेव जयते

**(Justice M. Chockalingam)**  
Judicial Member

**(Shri P.S.Rao)**  
Expert Member

**Chennai.**

Dated, 24<sup>th</sup> September, 2015.



**NGT**