

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

APPEAL Nos. 15 and 16 of 2014 (SZ)

In the matter of:

The Chairman

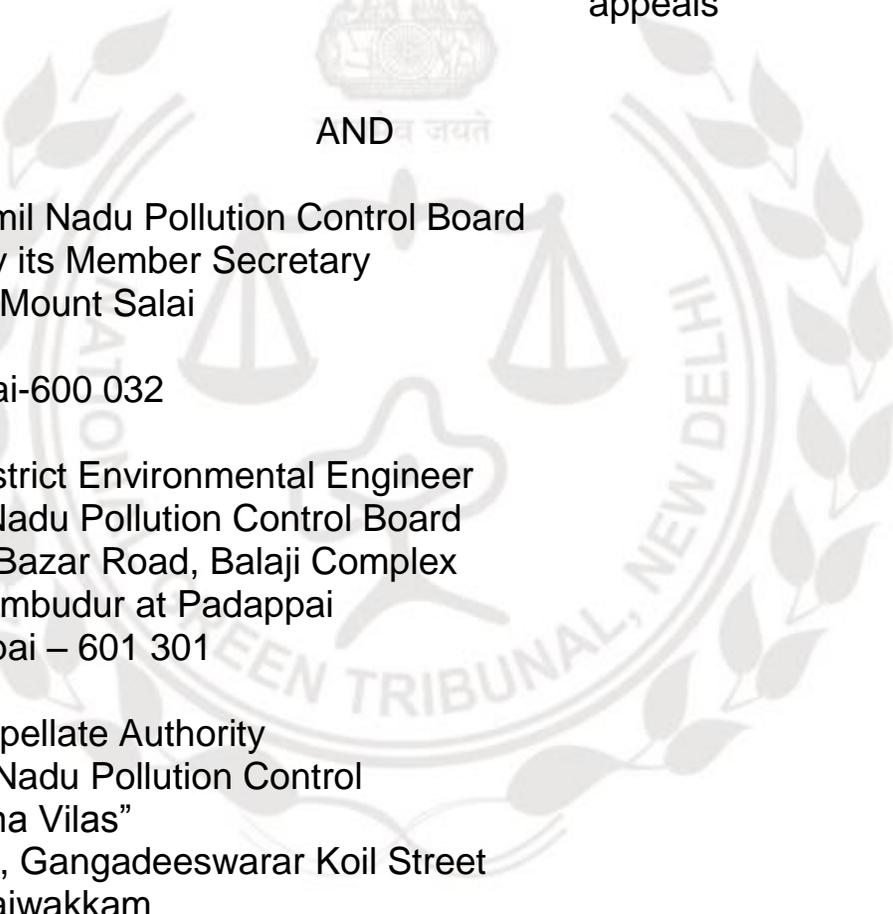
M/s. RCS Infrastructure Private Limited

No. 350, Ganapathy Colony, 11th Street

Eakkattuthangal

Chennai - 600 032

.. Appellant in both the
appeals

AND  

1. The Tamil Nadu Pollution Control Board

Rep. by its Member Secretary

No.76, Mount Salai

Guindy

Chennai-600 032

2. The District Environmental Engineer

Tamil Nadu Pollution Control Board

539/3, Bazar Road, Balaji Complex

Sriperumbudur at Padappai

Padappai – 601 301

3. The Appellate Authority

Tamil Nadu Pollution Control

“Krishna Vilas”

No. 51, Gangadeeswarar Koil Street

Purasaiwakkam

Chennai- 600 084

.. Respondents in
both the appeals

Counsel appearing:

Appellant

.. M/s. A. Kalaiselvi and P. Velumani,
Advocates

Respondents

.. Shrimathi H. Yasmeen Ali, Advocate
for respondent Nos. 1 and 2

JUDGEMENT

Present:

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

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

Dated, 15th July, 2015

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

(Judgement delivered by the Bench)

The appellant herein has filed these appeals against the order passed by the Appellate Authority, Tamil Nadu Pollution Control, Chennai (Appellate Authority) dismissing the Appeal Nos. 32 and 33 of 2012 dated 10.01.2014 filed by the appellant thereto against the order of rejection to grant consent under Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act) by the respondent Tamil Nadu Pollution Control Board (TNPCB) for the blue metal crushing unit at S.F. No. 323/5 A, 5 B and 5 C in Siruthamur Village, Uthiramerur Taluk of Kanchipuram District.

2. The appellant has stated that he started the unit during the year 2008 and at the time of starting the unit, he was not aware that the appellant has to obtain prior permission from the respondents TNPCB to establish and operate the unit. During the inspection conducted on 29.10.2010 by the 2nd respondent, it was pointed out that the appellant should get Consent to Establish (CTE) from the 2nd respondent. Hence, the appellant made an application for granting CTE under Water Act and Air

Act dated 21.10.2010 through the care centre of TNPCB. However, the 2nd respondent rejected the on 15.02.2011.

3. Aggrieved with the order of rejecting his application by the 2nd respondent, the appellant preferred appeals in Appeal Nos. 32 and 33 of 2012 before the Appellate Authority. Having gone through the case in detail, the Appellate Authority dismissed both the appeals by a common order dated 10.01.2014. Hence, the appellant herein has brought forth the appeals before this Tribunal.

4. The 1st and 2nd respondents, namely, the TNPCB filed a common reply in both the appeals in which they stated that the appellant applied for the consent of the TNPCB on 21.10.2010 for crushing the stone of different size at the rate of 700 T/month using the granite boulders. The unit of the appellant was inspected on 29.10.2010 by the officials of the TNPCB and during inspection, it was noticed that the unit was in the process of establishing a stone crusher unit without obtaining CTE from the TNPCB. Hence, a show cause notice was issued under Water Act and Air Act for establishing the unit without obtaining CTE from the TNPCB.

5. The appellant in his reply dated 12.11.2010 replied to the show cause notice, stated that he did not know the procedure of obtaining CTE from the TNPCB before establishing the unit and as per the instructions given during the inspection he stopped the activity of establishing the unit. The unit was again inspected on 13.11.2010 and it was noticed that it has stopped the activity. The unit was located beyond 500 m from the village site,

approved residences, schools etc. However, there was one farm house located at a distance of 75 m from the site of the crusher unit and it was informed that the unit had made an agreement with the owner of the farm house to purchase the same.

6. The matter was placed in the 27th Zonal Level Consent Clearance Committee meeting held on 18.11.2010 to consider the application for granting CTE to the unit under Water Act and Air Act. The Committee decided to direct the 2nd respondent, District Environmental Engineer, (DEE), TNPCB to inspect the site of the unit with regard to the distance between the unit of the appellant and stone crushers already located in that area and put up an agenda along with the latest stage on the court case on the distance between any two crushers. Therefore, the site was again inspected on 01.02.2011 by the TNPCB and during the inspection it was found that there were five stone crushing units in the locality out of which three were operating with the consent of the TNPCB and existing at a distance ranging from 339.2 m to 626.9 m from the unit of the appellant and the remaining two crushing units were closed and they vacated the premises. As per the TNPCB Proceedings B.P.Ms.No. 4 dated 02.07.2004, the minimum distance between two new/proposed stone crushers should be at least 1 km to prevent influence of dust pollution one over the other. Therefore, the Zonal Consent Clearance Committee in the meeting held on 11.02.2011 decided to reject the application for granting CTE to the appellant as it did not meet the siting criteria prescribed in the TNPCB Proceedings dated 02.07.2004. Hence, the application filed by the appellant

for grant of consent was rejected vide TNPCB proceedings dated 15.02.2011.

7. Aggrieved over the rejection of the application, the appellant has preferred the appeals before the Appellate Authority in Appeal Nos. 32 and 33 of 2012 which were dismissed by the Appellate Authority on 10.01.2014 as they were found to be devoid of merits. Aggrieved with the rejection of appeals by the Appellate Authority, the applicant filed the appeals before this Tribunal.

Observations and discussion:

8. The Tribunal has gone through the averments made in the appeals, reply filed by the respondents, looked into the materials placed and the orders dated 10.01.2014 passed by the Appellate Authority in the Appeal Nos. 32 and 33 of 2012 and also heard the parties.

9. It is not denied that the appellant established the stone crushing unit in the year 2008 at the site referred to above without obtaining consent from the respondent TNPCB and continued the operations in the unit till 2010 in violation of law. Only during the inspection of the unit on 29.10.2010, it was found by the TNPCB that the unit was illegally functioning. Hence, a show cause notice was issued to the appellant under relevant sections of the Water Act and Air Act. In reply to the show cause notice, the appellant had stated that he was not aware of the fact that prior consent from the respondent TNPCB for establishing and operating the stone crushing unit is required to be taken. Only after the inspection and pointing out by the TNPCB, the

appellant made application for the grant of CTE on 21.10.2010 based on which the officials of the TNPCB inspected the unit on 13.11.2010. The subject was placed in the 27th Zonal Consent Clearance Committee Meeting held on 18.11.2010. The Zonal Consent Clearance Committee decided to direct the DEE, Sriperumbudur to inspect the unit's site with regard to the distance between the unit of the appellant and other stone crushers located in that area. Therefore, the unit was again inspected by the officials of the TNPCB on 01.02.2011 during which it was observed that there were 5 stone crushing units already existing near the appellant's unit and all of them were falling at a distance below 1 km from the appellant's unit. Based on this final inspection and the report of the concerned DEE, the Zonal Consent Clearance Committee examined the issue and found that the siting criteria fixed in the TNPCB Proceedings B.P.Ms.No.4 dated 02.07.2004 were not fulfilled for granting consent to the applicant's unit. Therefore, the respondent TNPCB *vide* its order dated 15.02.2011 rejected the application made by the appellant for granting CTE to the stone crushing unit.

10. Aggrieved over the rejection order of the TNPCB, appeals were filed in Appeal Nos. 32 and 33 of 2012 before the Appellate Authority under Water Act and Air Act, respectively. Perusal of the orders dated 10.01.2014 of the Appellate Authority indicates that the main reason for rejection of granting consent by the TNPCB is that the unit of the appellant is located within 1 km from the existing stone crushing units functioning in a cluster

and therefore, it is in violation of siting guidelines prescribed in TNPCB Proceedings B.P.Ms.No.4 dated 02.07.2004. Further, it reveals that the Appellate Authority, while dismissing the appeals has taken into account the other technical issues and delegation of powers to the DEE under section 15 of the Air Act on whose inspection report, the decision was taken by the TNPCB rejecting the application for grant of consent.

11. The contention of the appellant is that his unit was already under operation right from the year 2008 and the TNPCB has not stated in its reply the details of the year during which the consents were granted to the other units located in the cluster and the applicant could not be isolated and denial of grant of consent to his unit is discriminatory. The above contention of the appellant cannot be accepted as at the time of making the application for the grant of CTE by the appellant herein, necessary consents were already issued to the 5 units located in the cluster. Therefore, the siting guidelines have to be taken into account while examining the application as the appellant's unit is found located within 1 km radius of the existing units at the time of making the application for the grant of CTE and the TNPCB has already granted the CTE for the other 5 units out of which 3 are functioning now. Hence, the TNPCB is right in rejecting the application and the orders passed by the Appellate Authority in dismissing the appeals filed in this behalf are found to be in accordance with law. The appellant has not advanced any new points before this Tribunal to substantiate his contentions. Hence, this Tribunal is of the considered opinion that there is no

reason to interfere with the orders dated 10.01.2014 passed by the Appellate Authority dismissing the Appeal Nos. 32 and 33 of 2012 filed by the appellant before the Appellate Authority.

12. In the result the appeals are dismissed.

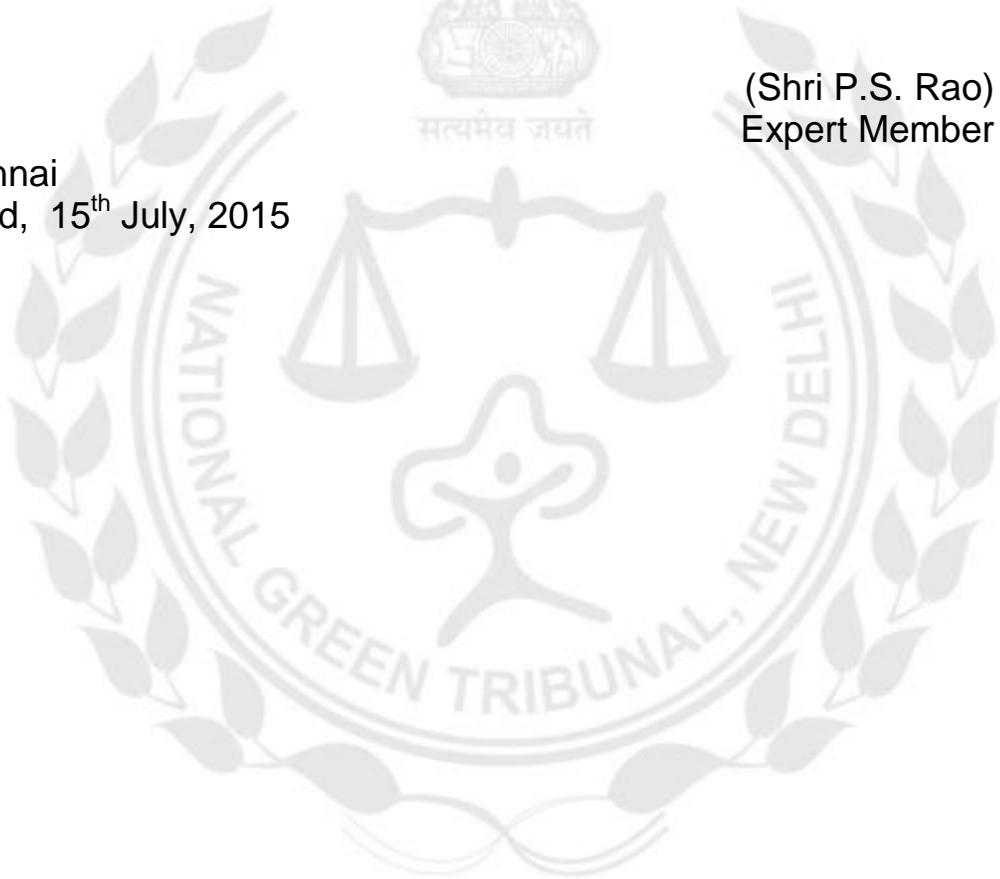
No cost.



(Justice M. Chockalingam)
Judicial Member

(Shri P.S. Rao)
Expert Member

Chennai
Dated, 15th July, 2015



NGT