

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

Appeal No. 42 of 2014 (SZ)

IN THE MATTER OF:

Mathialagan
Thillivalagam Panchayat
Thillaivalagam Post
Thiruthuraipoondi
Thiruvarur

Versus

1. Union of India
Rep by its Secretary
The Ministry of Environment and Forests
New Delhi
2. The State Environmental Impact Assessment Authority
Panagal Building, Saidapet
Chennai
3. The Tamil Nadu Pollution Control Board
Rep by its Member Secretary\
Mount Road, Chennai
4. The District Environmental Engineer
The Tamil Nadu Pollution Control Board
Thiruvarur District
5. The District Collector
District Collectorate
Thiruvarur, Thiruvarur District
6. R.Mahesh
20, Pillai Street
Thiruvarur - 610 001

Counsel appearing for the Applicant:

Mr. A.Yogeshwaran

Counsel appearing for the Respondents:

Smt.C.Sangamithrai for R-1

Smt. P.Mahalakshmi for R-2

Smt. H.Yasmeen Ali for R-3 and R-4

M/s M.K.Subramanian and

M.R.Gokul Krishnan for R-5

M/s V.Suthakar, K.S.Viswanathan and जयते

M.Gopi for R-6

ORDER

PRESENT:

HON'BLE SHRI JUSTICE DR. P.JYOTHIMANI, JUDICIAL MEMBER

HON'BLE PROF.DR. R. NAGENDRAN, EXPERT MEMBER

Dated: 5th February, 2015

1. We have heard the learned counsel appearing for the appellant as well as the respondents at length. This appeal is directed against the impugned order of the State Environmental Impact Assessment Authority (SEIAA), Tamil Nadu dated 20.5.2013 by which the SEIAA has granted an approval of Environmental Clearance (E.C.) for the proposal of the 6th respondent, project proponent for extracting quarry sand (Savudu) deposited at survey Nos. 138/1B1, 138/2A, Thillaivilagam Village, Thiruthuraipoondi Taluk,

Thiruvarur District .

2. The main ground raised in the appeal is that on the date of grant of E.C., namely 20.5.2013, the SEIAA was not having jurisdiction to issue the same. According to the appellant, the Udayamarthandapuram bird sanctuary is situated within the prohibitive distance of 10 k.m. and on that day it was MoEF who is the competent authority to decide about the grant of E.C.. While so, the impugned order for granting E.C. is totally illegal. It is admitted that the MoEF has issued Office Memorandum only on 24.6.2013 by which the quarrying of sand (Savudu, ordinary earth) is categorized under B-2 category. Of course, it was subsequently amended on 9.9.2013 and the Government has stated that mining of such minor mineral in less than 5 hectares does not require any E.C. Even though Mr. Viswanathan, the learned counsel for the project proponent would vehemently contend that on the date of issuance of E.C. by SEIAA on 20.5.2013, there was an authority conferred by MoEF in its O.M. Issued earlier on 18.5.2012, it remains a fact that as per the Judgment of the Hon'ble Supreme Court in **Deepak Kumar and Others Vs. State of Haryana and others** (2012) (4) Supreme Court Cases 629, the Supreme Court in the penultimate paragraph has stated that till the State Government or Union Territories pass appropriate orders by considering the Core Committee Report submitted to the Supreme Court, the issuance of leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental

clearance from MoEF .

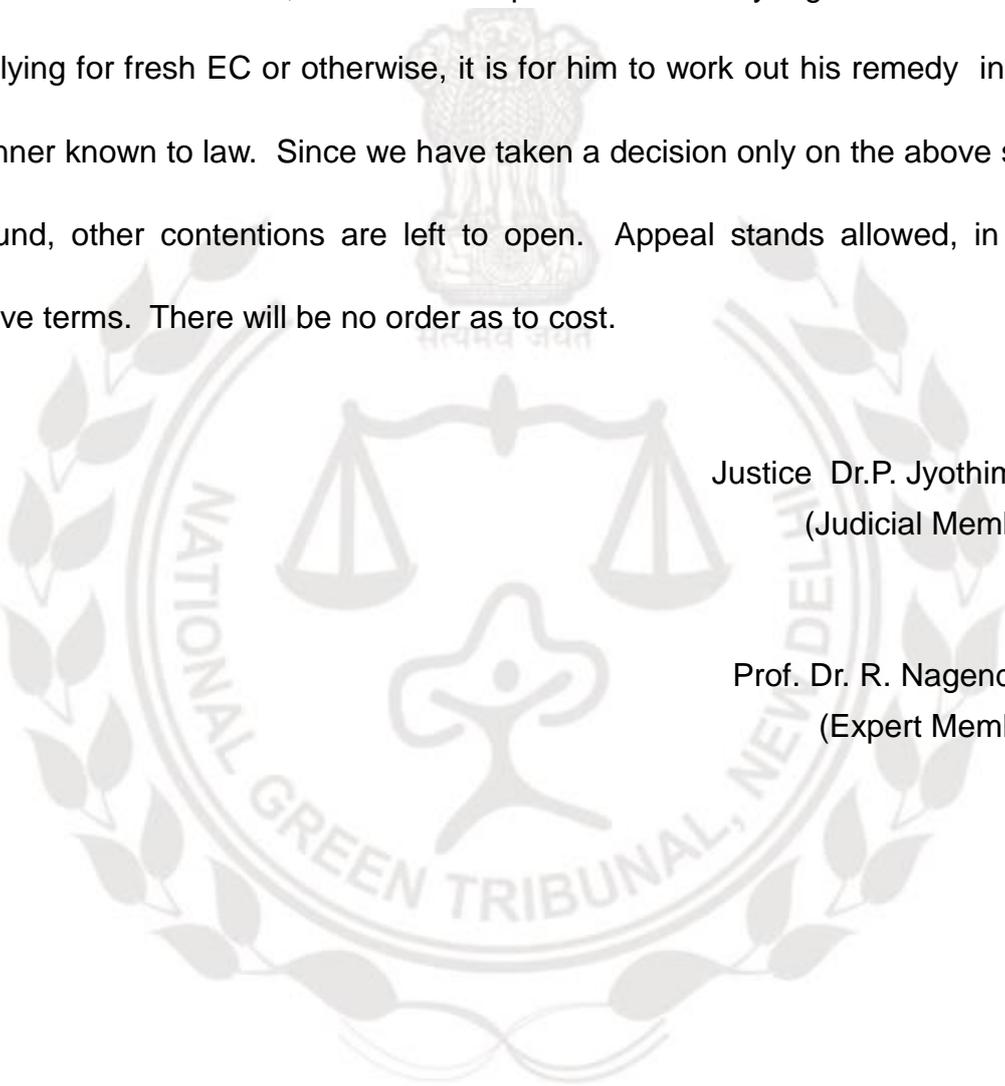
3. The learned counsel for the 6th respondent on instruction however has submitted that by virtue of the subsequent O.M. as well as amendments he is better placed as on date and he has got a chance of applying to the authority competent for the purpose of granting fresh E.C.. This submission he has made due to the reason that even though it is the case of the appellant that there is a deliberate suppression in Form - 1 submitted by the 6th respondent which he has denied, he was compelled to take the above said decision due to the reason that the 6th respondent by virtue of his conduct has not earned any benefit since he has not even started the business except filing cases in various Courts. He also would submit that by virtue of his decision to approach the proper authority for grant of fresh EC, the Writ Appeal filed by him before the Hon'ble High Court in respect of his plea for police protection becomes infructuous since the cause of action contained therein has ceased to be affective.

4. Considering the above said contentions and request made by the respective counsel and taking note of the fact that the SIEAA at least on the date when the E.C. was granted i.e., on 20.5.2013 ought to have considered the existence of the bird sanctuary in the light of the Judgment of the Hon'ble Apex Court stated above, we are of the considered view that the SIEAA had no jurisdiction on the date of granting EC. It is only on that point we have come to the conclusion that the impugned EC is to be set aside. Therefore,

agreeing with the said contention raised by the learned counsel for appellant alone we set aside the EC granted by the SIEAA and allow the appeal. Needless to state that, if the 6th respondent has any right in law either applying for fresh EC or otherwise, it is for him to work out his remedy in the manner known to law. Since we have taken a decision only on the above said ground, other contentions are left to open. Appeal stands allowed, in the above terms. There will be no order as to cost.

Justice Dr.P. Jyothimani
(Judicial Member)

Prof. Dr. R. Nagendran
(Expert Member)



NGT