

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

ORIGINAL APPLICATION No. 214 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Srinivasa Blue Metal,
Thirumangai Alwarpuram,
Survey No.260/2B1,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District.



...

Applicant

सत्यं जयते
Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045.

...

Respondents

ORIGINAL APPLICATION No. 217 of 2013 (SZ)

IN THE MATTER OF:

1. M/s Mercury Blue metal,
Thirumangai Alwarpuram,
Survey No.251,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District

...

Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.

2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.

3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tamabaram, Chennai-600 045.

... Respondents

ORIGINAL APPLICATION No. 224 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. K.G.Constructions,
Thirumangai Alwarpuram,
Survey No.229,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District.

...

Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.

2. The District Environmental Engineer,
The Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.

3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045.

... Respondents

ORIGINAL APPLICATION No. 226 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Sugam Blue Metal,
Thirumangai Alwarpuram,
Survey No.229/1,

Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District

...

Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045. ... Respondents

ORIGINAL APPLICATION No. 227 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Brinda Blue Metal,
Thirumangai Alwarpuram,
Survey No.251,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District. ... Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045. ... Respondents

ORIGINAL APPLICATION No. 244 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Sree Brindhavan Blue Metal,
Thirumangai Alwarpuram,
Survey No.230,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District.



...

Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045.

...

Respondents

ORIGINAL APPLICATION No. 295 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Ponmanam Blue Metal Unit-I,
Thirumangai Alwarpuram,
Survey No.261/1,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District

...

Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,

Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.

3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045. ... Respondents

ORIGINAL APPLICATION No. 296 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. Ponmanam Blue Metal Unit-II,
Thirumangai Alwarpuram,
Survey No.245/1 E,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District. ... Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045. ... Respondents

ORIGINAL APPLICATION No. 322 of 2013 (SZ)

IN THE MATTER OF:

1. M/s. J.K.R Blue Metal,
Thirumangai Alwarpuram,
Survey No.266/2,
Thiruneermalai Village,
Alandur Taluk,
Kanchipuram District. ... Applicant

Versus

1. The Chairman
Tamil Nadu Pollution Control Board
No.77, Mount Road,
Guindy, Chennai-600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Adigal Street,
Maraimalai Nagar,
Chengalpattu Taluk,
Kanchipuram District.
3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board (TANGEDCO)
Tambaram, Chennai-600 045. ... Respondents

Counsel appearing for the applicants: M/s. D. Ashok Kumar, T. Arumugam and M.K. Sathish

Counsel appearing for the respondents: Smt. Yasmeen Ali for Respondent No.1 & Respondent No.2 and Sri. P. Gnanasekaran for Respondent No.3 in Application Nos.214, 217,224,226,227,244 of 2013.
Smt.Rita Chandrasekar for Respondent No.1 and Respondent No.2 in Application Nos.295, 296 and 322 of 2013.

ORDER

PRESENT:

- (1) **Hon'ble Shri. Justice M. Chockalingam**
Judicial Member
- (2) **Hon'ble Shri. P.S. Rao**
Expert Member

Dated, 14th September, 2015.

1. Whether the judgment is allowed to be published on the internet:
YES/NO
2. Whether the judgment is to be published in the All India NGT Reporter:
YES/NO

These applications have been filed against the closure order and directions dated 29.07.2013 issued by the 1st respondent under Sec.31A of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) to the Tamil Nadu Electricity Board (TNEB) to disconnect the power supply to the stone crushing

units of the applicants. In the applications the applicants made a prayer to set aside the impugned order contending that they have complied with the instructions issued by the Tamil Nadu State Pollution Control Board (Board) and taken all the preventive and precautionary measures to control the pollution. The case of the applicants in brief is as follows:

2. The applicants are operating stone crushing units located in a cluster in Thirumangai Alwarpuram area, Thiruneermalai Village, Alandur Taluk, Kanchipuram District for producing blue metal jelly of various sizes with a capacity of 1000 tonnes per month. They have obtained Consents from the 1st respondent Board both under the Air Act and the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the same have been renewed from time to time. On various occasions of inspection of their units, the 2nd respondent has directed to install Air Pollution Control (APC) devices/equipment and take all the necessary pollution control measures which the applicants' have complied with.

3. The applicants further state that neither they received any show cause notice dated 15.05.2013 purportedly issued by the Board on the ground that the units are not complying with the directions imposed in the Consent order nor the 2nd respondent has conducted any inspection of the units on 07.03.2013, 03.04.2013 and 11.06.2013 as alleged in the impugned order issued by the 1st respondent. The applicants further deny the statement made in the impugned order that complaints have been received from the public against their units alleging that they are causing pollution. They contend that adequate APC measures have been taken and the so called complaints received against the units are false as there are no residences situated in the vicinity of the stone crushers to complain against them. The applicants state that the units come under the orange category as they are less polluting industry and this is a motivated allegation.

4. The applicants further put forth that water sprinklers are used continuously to avoid fugitive emissions and chutes have been attached in the conveyor belt to avoid air pollution. Except the development of green belt, they have complied with all other conditions to avoid air pollution. The applicants finally state that since there is a fear of impending disconnection of the power supply by the 3rd respondent in compliance of the impugned order and if power supply is disconnected it will lead to severe financial loss to them and also much hardship to the employees' depending on the units for their livelihood, they have approached the Tribunal challenging the impugned order and for granting relief.

5. The 1st and 2nd respondents have filed a joint reply in October, 2013 followed by a series of status reports the last being dated 10.08.2015. They aver that in the impugned order it has been clearly stated that on an inspection carried on 06.07.2012 it was observed that the units were under operation in contravention of the conditions stipulated under Section 21 of the Air Act. Hence a show cause notice was issued by the DEE on 09.07.2012 as to why penal action should not be taken under Sec. 37 of the Air Act and why power supply shall not be disconnected as per the powers vested with the Board under Sec. 21 of the Air Act. In the reply dated 05.09.2012, furnished by the units it was stated that necessary APC measures have been taken and there is no pollution. But during the course of inspection made on 07.03.2013, 03.04.2013 and 11.06.2013 the units were found operating without the consent of the Board as required under Sec.21 of the Air Act and have not provided with adequate APC measures contrary to the claims made by the applicants. Accordingly, the DEE in his letter dated 20.06.2013 has recommended for issuance of orders for closure and disconnection of power supply to the units and hence the closure order dated 29-7-2013 was issued with immediate effect.

Discussion and Conclusions:

6. The main contention of the applicants in all the above 9 applications is that based on the instructions issued by the 2nd respondent during various inspections conducted on their units necessary APC measures have been taken and they are always ready to obey any other conditions that are imposed and as and when directed to be implemented. However, in spite of such position, the 1st respondent issued the impugned proceedings dated 29.07.2013 under Sec. 31 A of the Air Act stating that during the course of inspection of the units on 07.03.2013, 03.04.2013 and 11.06.2013 the industry was found operating without consent of the Board and have not provided with APC measures including dust suppression system like water sprinklers and also not developed adequate green belt. Further, it was also stated in the proceedings that complaints are being received from the public with regard to air pollution and noise pollution caused by the units. But the applicants have denied that they have been issued with the show cause notice by the respondent Board and they were dismayed to find that in spite of complying with various APC measures and having not been served with any show cause notice and without giving any opportunity to explain their position the Board has unilaterally taken a decision and issued the impugned order which goes against the principles of natural justice. They state that except the development of green belt they have taken all the necessary APC measures to avoid pollution.

7. When the applicants approached this Tribunal directions were issued to the Board to conduct inspection and based on the status reports furnished by the Board that the applicants have taken APC measures the Tribunal has issued orders for restoration of power supply. Having obtained temporary relief from this Tribunal, all the 9 applicants have been granted with Consent to Operate which was renewed up to 30.06.2015 and all of them have been pointed out with the

shortcomings in taking adequate APC measures and directions were issued to comply the same wherever they are required.

8. Subsequently, the respondent Board filed its report dated 10.03.2015 wherein it was stated that when the aforesaid units were inspected on 23.01.2015, 27.01.2015 and 24.02.2015 it was found that the APC measures were not properly implemented and it was noticed that the enclosures were found removed and water sprinklers were either removed or clogged and not kept in operational condition and the saplings planted earlier in the units were not maintained properly. Therefore, it is clear that in spite of the fact that they were allowed to continue their operations by renewing the consent the applicants have failed to adhere to the norms prescribed and neglected the anti pollution devices/equipment and kept them non functional which goes without saying that they continued to operate the units causing pollution. Accordingly, the Tribunal directed the units to restore and make the devices and equipment operational duly taking all the required APC measures without fail. The Board was directed to make further inspection and report. Accordingly the Board filed status report on 22.07.2015 stating that the units were inspected on 09.07.2015 and 16.07.2015 and it was found that necessary preventive measures have been taken. The statement made by the Board in the status report is reproduced below:

“The applicant units have provided the APC measures such as GI sheet cover for the crusher and sieve areas, water sprinkler for the product discharge areas and lunar cover for the belt conveyors. Also green belt has been developed to attenuate the noise and air pollution.”

9. Further status report was filed by the Board on 10.08.2015 with the same position as stated in the earlier status report dated 22.07.2015. During the course of hearing the case on 03.09.2015 the applicants filed a combined reply to the status report of the respondent Board contending that they have taken all the necessary

APC measures and on their request, the Board has inspected the units on 09.07.2015 and agreed that these 9 units have complied all the formalities and carried out the safety measures and therefore as per the report of the Board their applications may be ordered as prayed for.

10. The point to be considered here is that all the aforesaid 9 units except the unit in Original Application No.296 of 2013 have been established before the Board issued the proceedings dated 02.07.2004 wherein norms for location of stone crushers with reference to distance criteria, criteria for new/proposed crushers and air pollution control measures were fixed and all these 9 units are part of the cluster of 53 stone crushing units located at Thirumangai Alwarpuram area, Thiruneermalai Village, Alandur Taluk of Kanchipuram District. The oldest unit among them being the unit covered under Original Application No.217 of 2013 which has commenced its activities as long back as in 1973 and the rest of them were commissioned between the years 1992 to 2008. However, as per the records placed before us by the respondent Board, the Consent to Establish and Consent to Operate the units were granted during 2008 and 2009. During the course of inspection carried out in April, 2013 and June, 2013 the Board found that the units have not been provided with adequate APC measures and they are aoperating without valid renewal of consent. Therefore the Board issued the impugned proceedings dated 29.07.2013 under Section 31A of the Air Act and the applicants have challenged the impugned proceedings before this Tribunal. However, based on the subsequent inspection and status reports submitted by the Board that the units were inspected and they were found implementing the APC measures this Tribunal directed to restore the power supply and the units were issued with renewal Consent for a period up to 30.06.2015. The status report dated 22.07.2015 submitted by the Board indicates that when the units were inspected on

23.01.2015, 27.01.2015 and again on 24.02.2015 it was found that the APC measures such as dust containment and dust suppression systems were not properly maintained. Therefore, it is crystal clear that the applicants were highly negligent, have violated the law and operated the units causing pollution. During the inspection it was observed that the enclosures were found removed and water sprinklers were kept in unworkable condition. Green belt was also not maintained. This clearly reveals that the applicants in all the above 9 applications taking advantage of the restoration of power supply and granting of renewal of consent, failed to keep the APC measures in working condition and went on operating the units not only causing pollution but also breaching the trust reposed on them by violating the conditions imposed in the consent. This would be quite indicative of the deliberate non-compliance of the Tribunal's order. Therefore imposition of penalty in the considered opinion of the Tribunal, could be required by circumstances as also would meet the ends of justice. After repeated inspections made by the Board and continuous monitoring by this Tribunal only recently as reported in the latest status reports of the Board dated 09.07.2015 and 10.08.2015, the units were found restored with the APC measures wherein it was also reported that the units have established green belt to attenuate the noise and air pollution.

11. Further, as seen from the reply of the respondent Board the applicants continued to operate the units beyond June 2015 without obtaining renewal of consent. Thus they were found causing pollution and operating without renewal of consent and without complying with the conditions imposed. No doubt, now the units have complied with the conditions prescribed by the Board as found in the status report of the DEE filed after the last inspection done on 09.07.2015 but it is not disputed that without following the norms prescribed by the Board and without

obtaining renewal consent, the applicants went on operating their units thus causing pollution.

12. Though it is reported by the DEE in his latest status report that the green belt arrangement has been made it is clear that the units were under operation for a long period without establishment of green belt. As per the norms fixed by the Board in its guidelines issued on 02.07.2004, the applicants have to provide a 10 m wide thick green belt by planting trees in multiple rows all around their units.

13. The important aspect which cannot be overlooked by the Tribunal is that the applicants are carrying on their activities without obtaining renewal of consent which expired on 30.06.2015 and without complying with the conditions prescribed by the Board and without taking adequate APC measures. This rendered the applicants liable for the damage to the environment that has been caused and also for restitution thereof and pay compensation under 'Polluter pays principle'. However, it may not be possible to determine the quantum of the compensation exactly since at this juncture, no data can be found as regards the exact damage that was caused. But, that does not mean that the applicants can be let off from the liability in that regard. Therefore, liability is accrued on the applicants for operating the units without taking adequate APC measures for commercial gain by causing irretrievable damage to the environment. It is pertinent to mention here that the applicants are operating the units for a long period without taking adequate APC measures which made the public to file complaints with the authorities. Further, the units also failed to create the green belt around their periphery. Lack of such green belt over such a long period had certainly affected the environment adversely.

14. We, therefore, feel it is a fit case to invoke the 'Polluter pays principle' against the applicants for having operated the units without taking adequate APC measures which lead to causing of pollution and consequent damage to the environment. The Hon'ble Apex Court in *M.C. Mehta v. Union of India* 1991 SCC (2) 353, in the cases relating to Stone crushing operations in the vicinity of Delhi, taking Air Pollution as a very serious matter, observed as under:

We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area.

15. In *M.C. Mehta v. Kamal Nath* 1997 (1) SCC 388, the Apex Court also laid emphasis on the principle of polluter pays and held that one who pollutes the environment must pay to reverse the damage caused by his acts. It is also relevant to mention here that this Tribunal in the case of *Court on its own motion v. State of HP and others* reported in the All India NGT Reporter 2014 (1) Part 3, held that:

The other relevant principle is the 'Polluter Pays' principle which can be applied to prevent as well as control further environmental damage in the area. The 'Polluter Pays' principle is one which is aimed at ensuring that the costs of environmental damage caused by the polluting activities are borne in full by the person responsible for such pollution. It is said that this principle means that the polluter should pay for the administration of the pollution control system and for the consequences of the pollution, for example, compensation and clean up. Under this principle, the Government alone cannot be held responsible for preventing and controlling the environmental pollution. If this fiscal incident in its entirety is shifted to the Government, then it would amount to unduly burdening the common tax payer, for none of his fault, for taking anti-pollution, preventive and remedial measures. The actual polluter, thus must be held liable for the damage done. This doctrine has been accepted in larger parts of the world as the fundamental principle on environmental matters and has been one of the underlying principles for action programme on the environment.

16. However, as stated above, at this stage it is not possible to assess and quantify the damage caused to environment and hence, considering the date of

commissioning, nature of activity, capacity to handle the raw material and turnover of the units, we impose the penalty as follows:

Sl. No	Unit covered under the O.A. No.	Date of Commissioning	Penalty (Rs.)
1.	214/2013	During 1998	1,00,000
2.	217/2013	20.09.1973	1,50,000
3.	224/2013	01.01.1992	1,00,000
4.	226/2013	05.07.1995	1,00,000
5.	227/2013	19.11.2002	75,000
6.	244/2013	10.06.1994	1,00,000
7.	295/2013	20.11.1997	1,00,000
8.	296/2013	During 3/2008	50,000
9.	322/2013	During 1996	1,00,000

The amount shall be paid within one month from the date of this judgment to the Environment Relief Fund established under Section 24 of the National Green Tribunal Act, 2010.

17. Though it is reported that they have planted trees to attenuate the air and noise pollution we order that wherever the green belt is falling short the applicants shall ensure that thick vegetation constituting a green belt for a width of a minimum of 10 m around each of the units as prescribed in the Board proceedings dated 02.07.2004 is taken up by planting indigenous species suitable for controlling air pollution during the current Monsoon season in consultation with the local Forest officials. The Board shall monitor the work regularly.

18. However, considering the fact that the applicants have at last taken all the APC measures as reported after conducting latest inspection on 09.07.2015 by the concerned DEE, we set aside the impugned order and direct the Board to consider the applications seeking for grant of renewal of CTO in accordance with law and pass suitable orders thereon within a month of payment of aforesaid amount by the applicants.

19. The Board is directed to regularly study various aspects including maintenance of the standards prescribed in Schedule-I, Entries 11 & 37 of the Environment (Protection) Rules, 1986 with regard to the air pollution. In case if it is found that despite taking the aforesaid measures the pollution levels are not reduced and the ambient air quality is not within the limits, the Board shall be free to suggest additional measures for being applied and adopted in this area in view of the fact that the area has got a cluster of large number of Stone Crushing Units where heavy vehicular movement to transport raw material as well as finished product will be causing fugitive emissions leading to cumulative effect which the Board is required to take into consideration.

20. With the above orders and directions to the applicants to pay the penalty imposed against each of them in Para 16 within one month from the date of this judgment, the Applications stand disposed of. However, there will be no order as to cost.

(Justice M. Chockalingam)
Judicial Member

(Shri. P.S.Rao)
Expert Member

Chennai
Dated, 14th September, 2015