

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

APPLICATION No. 223 of 2014 (SZ)

In the matter of:

M/s. Kathir Blue Metals
Rep. by its Proprietor Mr. K. Chellappan
S/o Kumarasamy
No. 518/1C, Myvadi Village
Udumalaipettai Taluk
Tiruppur District



... Applicant

AND

1. Tamil Nadu Pollution Control Board
Rep. by its Member Secretary
Mount Road,
Chennai- 600 032

2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Palladam

3. The Divisional Engineer
TANTRANSCO
Udumalpet
Tiruppur District- 642 126

... Respondents

Counsel appearing:

Applicant ... M/s. M. Velmurugan, Girija Velmuruagan and
K.S. Elangovan, Advocates

Respondents ... Shrimathi H. Yasmeen Ali, Advocate for Respondent
Nos.1 and 2
Shri P. Gnanasekaran, Advocate for Respondent No. 3

ORDER

Present:

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

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

Dated 6th August, 2015.

(Delivered by the Bench)

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 has been filed by the applicant with a prayer for issuing directions to the 1st and 2nd respondents herein to grant an order of Consent to Operate (CTO) the stone crushing unit of the applicant situated at No. 518/1C, Myvadi, 1, 2 Village, Narasingapuram Post, Udumalaipettai Taluk, Tiruppur District, to direct the 3rd respondent, the Tamil Nadu Transmission Corporation (EB) not to terminate the power supply to the unit of the applicant situated at the above address and to permit the applicant to run the crusher subject to any conditions as this Tribunal may order till the final disposal of the application.

2. The brief facts of the case as made out from the memorandum of application filed by the applicant are that the applicant has established the stone crushing unit at the above address in the name and style of 'Kathir Blue Metals'. The unit has the capacity of handling 30 T of stones per day in the process of crushing. The unit provides work for about 12 to 15

persons who earn their livelihood and generates a revenue of around Rs. 2, 40,000/- per month.

3. The respondent Tamil Nadu Pollution Control Board (TNPCB) initially provided CTO the crusher in the year 2007 valid till 2008 and since the applicant was not much active in the business, the crusher was not operated till 2011. The unit was restored subsequently as he had some orders for the supply of blue metal in the year 2011. Meanwhile, the TNPCB issued strict norms for continuing the crushing unit and they were duly complied with. By the proceedings dated 28.12.2011 of the TNPCB, the unit of the applicant was restored with power supply and was permitted to run the crusher for further survey and analysis of the pollution caused by the applicant's unit with payment of necessary fees for the same to measure Ambient Air Quality (AAQ) and Ambient Noise Level (ANL). The TNPCB also conducted a survey on 04.04.2012 and the report of analysis dated 16.04.2012 reflected the levels within the permissible limit which would entitle the applicant for the grant of CTO from the TNPCB. On 21.10.2011, the applicant also complied with some more installations and spent around Rs.10,00,000/- for the same towards compliance of the norms of the TNPCB. Though the applicant paid the fees and sought for the CTO and has complied with all the requirements, the TNPCB has not issued the CTO till date. The 3rd respondent is also threatening to withdraw the power supply without the CTO of the TNPCB.

4. It is mandatory on the part of the TNPCB to issue order granting CTO or to refuse the same with valid reasons and communicate the same to the applicant as envisaged in Section 25 of Water (Prevention and

Control of Pollution) Act, 1974 (Water Act) and under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 (Air Act) within four months from the date of making an application. The law also mandates that the consent unless given or refused be deemed to have been given unconditionally on the expiry of a period of 4 months. Therefore, the applicant who had complied with all the requirements under law is deemed to have obtained the CTO. The applicant is facing huge hardship after investing all his money in the said unit which has been paralyzed by the respondents by not granting CTO within the mandatory period of 4 months.

5. *Per contra*, the 1st and 2nd respondents TNPCB would state in their reply that the unit of the applicant is an existing one and the CTO was granted for the first time *vide* its order dated 03.10.1991 for manufacturing 40 mm, 20 mm, and 4 mm size hard granite broken stones of 42 M³/month and stone dust of 6 M³/month. Consent was renewed from time to time and the last renewal was made for the period ending 30th September 2008.

6. Based on a complaint received from the public the applicant's unit was inspected by the officials of the TNPCB on 07.04.2010 and a show cause notice was issued to the unit *vide* Proceedings No. F.1173/AE (V)/W&A/10 dated 12.04.2010, as the unit has not complied with the conditions imposed in the consent order and that the unit was in operation without obtaining the renewal of consent. The applicant has furnished reply *vide* letter dated 03.05.2010, wherein it was requested to grant three months time to rectify the defects pointed out by the TNPCB on implementing the APC measures. The unit was inspected again on 28.07.2010 and 05.01.2011. During the course of inspection it was found

that the applicant's unit was not in operation and the unit had started improvement works to the APC measures as committed in the reply given to the show cause notice. During inspection, the unit had assured to complete the improvement works within 30 days.

7. The applicant *vide* his letter dated 10.02.2011 has submitted along with photographs that it has completed the installation of APC measures. However, a complaint was received from one, Thiru. N. S. Ganapathy on 09.03.2011 against the applicant's unit stating that the unit is under operation and causing air pollution and requested to take action against the applicant. Based on the complaint, the unit was inspected by the PCB on 21.04.2011. During inspection the unit was found in operation. However, it was also noted that the APC measures provided by the unit such as tin sheet cover for the Jaw Crusher and Screening Section were found to be totally damaged and that water sprinklers were yet to be provided both at the emission source and at other vital locations to suppress the dust emission and that the unit has not taken effective steps to install a permanent structure for the APC measures.

8. In view of the above deficiencies, directions were issued for the closure and disconnection of power supply to the applicant's unit *vide* Proceedings No. T16/TNPCB/F.8096/CBE/Orange/Comp/EB-1&A-1/2011-1&3 dated 02.08.2011. The applicant in his letter dated 21.10.2011 had informed that it had completed the APC measures and requested the TNPCB for revocation of closure order. The closure order dated 02.08.2011 issued to the unit was suspended *vide* TNPCB Proc. No. T16/TNPCB/F.8096/CBE/Orange/Comp/EB-2&A-2/2011-1&2 dated

28.12.2011 for a period of three months subject to the condition that the unit shall conduct AAQ survey through Advanced Environmental Laboratory, TNPCB, Coimbatore so as to assess the performance of the equipment installed as a part of APC measures. Accordingly, AAQ survey was conducted in the vicinity of the applicant's unit on 04.04.2012. The Results of Analysis of the AAQ Survey dated 16.04.2012 revealed that the parameters such as SPM, SO₂ and NO_x were within the standards prescribed by the Board.

9. The applicant's unit was subsequently inspected on 24.06.2013, 27.09.2013 and 09.12.2013. During these inspections it was observed that the unit was found not in operation, there was no activity inside the unit and no persons were available at the site. The APC measures were found to have worn out and in damaged condition. It was also observed that the machinery was in dismantled condition. Moreover, the applicant had not paid fees for renewal of the consent for the years 2011-12', 2012-13' & 2013-14'. However, subsequently, the applicant has paid the consent fee for the years 2011 to 2014 on 03.01.2014.

10. The applicant's unit was again inspected on 07.03.2014 and during inspection it was observed that the unit was not in operation, there was no activity inside the unit and found rectifying the APC measures. The applicant unit has paid the consent fee for the year 2014 – 15' on 11.03.2014, 23.07.2014 and 05.08.2014 and requested to issue the renewal of consent for the year 2014–15'. Based on the unit's request, it was inspected on 04.08.2014 and found that the unit has not yet completed the installation of APC measures.

11. The closure direction and disconnection of power supply ordered against the applicant unit was only suspended and orders for revoking the same were not issued by the TNPCB. During the course of inspection on 04.08.2014, it was noticed that the unit had not provided with all the required APC measures. Hence, the performance of the APC measures needs to be reassessed by conducting AAQ survey around the vicinity.

12. From the reply furnished by the respondent TNPCB, it could be seen that when the inspection was carried out on 04.08.2014, it was again noticed by the officials of the TNPCB that the unit was not provided with adequate air pollution control measures. Therefore, during the course of hearing of the case on 14.05.2015, the 2nd respondent, District Environmental Engineer (DEE) of PCB was directed to make a fresh inspection to ensure whether all the suggested air pollution control measures were subsequently taken up and completed by the applicant after the earlier inspection done on 04.08.2014 and also to find out AAQ and other pollution control aspects in the vicinity of the unit. Accordingly, the DEE, the 2nd respondent herein, after making inspection of the unit on 09.07.2015 filed a status report dated 10.07.2015 duly enclosing the inspection report. At the time of the inspection by the DEE, the unit was under operation. With regard to air pollution control measures the extract of the status report is as follows:

“iii. The unit has provided the following APC measures:

<i>Sl. No.</i>	<i>Source of Emission</i>	<i>APC measures provided</i>
<i>1</i>	<i>Jaw Crusher</i>	<i>Tin sheet cover with closed shed with water sprinkler arrangement</i>
<i>2</i>	<i>Rotary Screen</i>	<i>Tin sheet cover with closed shed</i>
<i>3</i>	<i>Conveyor Belt</i>	<i>Covered with MS Sheet</i>

4	Dust Collection Section	Dust Collection Chamber
5	Fugitive Emissions within the unit premises	Water Sprinkler Arrangement

iv. Water sprinkler arrangement was provided in the Jaw Crusher and the same was in operation.

v. The unit has provided Water sprinkler arrangements around the crusher area in three different places.

vi. The unit has developed green belt arrangement in the South and West directions.”

13. In his status report the DEE further reported that the AAQ survey revealed that the parameters such as PM10 and PM2.5 are within the standards prescribed by the TNPCB. A copy of the AAQ survey report was also enclosed by the DEE along with the status report. Finally, the DEE prayed that the Tribunal may be pleased to pass orders as deemed fit.

Discussion and Conclusion:

14. As revealed from the documents placed before us the stone crushing unit of the applicant was established more than two decades back and consent was first granted by the TNPCB on 03.10.1991 under the Water Act and Air Act. The last renewal of consent was made on 05.12.2007 for a period up to 30.09.2008. It is clear that the unit has not been granted renewal of CTO subsequent to 30.09.2008. But, as seen from the reply of the respondent, TNPCB, the applicant operated the unit beyond September 2008 without obtaining renewal of consent. Only based on the complaint received from the public, the officials of the TNPCB inspected the unit on 07.04.2010 and issued a show cause notice on 12.04.2010 to the

applicant as the unit was found causing pollution and operating without renewal of consent and without complying with the conditions imposed. The applicant replied to the show cause notice on 03.05.2010 and requested the TNPCB for granting three months time to rectify the defects. Therefore, the next inspection was made by the TNPCB on 28.07.2010 and 05.01.2011 and during these inspections it was found that the unit was not under operation and the rectification measures were under progress. Subsequently, a fresh complaint was received by the TNPCB on 09.03.2011 and the unit of the applicant was inspected on 21.04.2011 and found that it resumed operations without obtaining the renewal consent and also without taking adequate APC measures. Hence, the TNPCB issued closure order on 02.08.2011 along with order to disconnect electricity supply. However, based on the representation made by the applicant, the aforesaid closure order was suspended for a period of three months *vide* proceedings dated 28.12.2011 of the TNPCB and subsequently, the applicant filed application on 31.12.2013 before the TNPCB for renewal of consent for the year 2014-15'.

15. As brought forth above, the applicant was operating his unit intermittently without the renewal of the consent which expired as long back as on 30.09.2008 and in spite of issue of show cause notice and directions given during the course of inspections conducted by the TNPCB on 7-4- 2010, 28-7-2010, 5-1-2011, 21-4-2011, 4-4-2012, 24-6-2013, 27-9-2013, 9-12-2013, 7-3-2014 and 4-8-2014 the applicant was running the unit without providing adequate APC measures and thus not only violated the law but also caused pollution. After the expiry of the consent on 30-9-2008 the TNPCB inspected the unit on 07.04.2010 and acted upon based on the

complaints received from the public. Thereafter after a prolonged period of about 7 years and after conducting the latest and last inspection on 09.07.2015, the TNPCB has categorically stated in the status report that all the required APC measures were implemented by the applicant. But, the fact remains that the applicant was clandestinely operating the unit without obtaining consent for renewal and without taking adequate APC measures after the expiry of the consent on 30.09.2008. Though the TNPCB has given the closure order as well as order for disconnection of power supply on 02.08.2011, it suspended the order within three months. No doubt, now the unit has complied with all the regulations prescribed by the TNPCB as found in the status report of the DEE filed after the last inspection done on 09.07.2015, it is not disputed that without following the norms prescribed by the TNPCB and without obtaining renewal consent, the applicant went on operating the unit thus causing pollution.

16. Though it is reported both by the applicant as well as in his latest status report by the DEE that the green belt arrangement has been made in South and West directions in the unit's premises, the photographs filed by the applicant in Volume II type set papers at Page Nos. 22 to 30 show that only recently a few saplings have been planted which cannot be construed as development of green belt. As per the norms fixed by the TNPCB in its guidelines issued on 02.07.2004, in case of a single crusher, green belt around the periphery of the unit shall be of at least 10 m which implies that the applicant has to provide a minimum of 10 m wide thick green belt by planting trees in multiple rows all around his unit.

17. Therefore, the very important aspect which cannot be overlooked by the Tribunal is that the applicant is carrying on the activity in his unit knowing fully well that it is illegal to operate without obtaining renewal of consent which expired on 30.09.2008 and also without complying with the conditions prescribed by the TNPCB and without taking adequate APC measures. Though the applicant paid the consent fee for the years 2010 to 2014 on 03.01.2014 and for the year 2014-15' on 05.08.2014 and requested the TNPCB to grant renewal of consent, during the course of inspections by the officials of the TNPCB it was observed that the unit had not completed the installation of APC measures. This rendered the applicant entirely liable for pollution and environmental damage that has been caused during the interregnum period and also restitution thereof. The Hon'ble Supreme Court of India in *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212 applied the 'Polluter pays' principle and relied on the following observation with regard to the principle as follows:

“The polluter pay principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause pollution. Under the said principle, it is not the role of the Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of pollution incident to the taxpayer”.

18. Therefore, the applicant is liable to pay compensation for causing damage to the environment under 'Polluter pays principle'. However, it may not be possible to determine the exact quantum for the compensation since at this juncture, no data can be found as regards the exact damage that

was caused. But, that does not mean that the applicant can be let off from the liability in that regard. Further, the applicant was operating the unit without obtaining renewal of the consent. The Hon'ble Supreme Court of India in the case of *M/s. Sterlite India Ltd., v. Tamil Nadu Pollution Control Board and others* reported in JT 2014 SC 388 has directed the company to pay Rs. 100 Crore which operated without obtaining renewal of consent from the TNPCB.

19. Therefore, liability is accrued on the applicant for illegal and unauthorized operation of his unit for commercial gain after the expiry of the consent on 30.09.2008 and for causing damage to the environment. It is also pertinent to mention here that the applicant initially got the consent in 1991 and obtained renewal of consent up to 30.09.2008. Thus it is clear that he was operating the unit for more than 2 decades without taking adequate APC measures which made the public to file complaints against the applicant's unit for causing pollution.

20. With regard to the development of green belt as stated *Supra*, planting of trees here and there in isolation and few trees in a single row for a small stretch does not constitute development of green belt. Though the unit started its operations in the year 1991, it failed to create the green belt at any given point of time except recently planting few saplings which could be seen from the photographs filed at page Nos. 22 to 30 of the type set of papers as Volume-II which indicate that the plants are only few months old and thus for two decades, the unit failed to create green belt around its periphery. Lack of such green belt over such a long period of two decades had certainly affected the environment adversely.

21. We, therefore, feel it is a fit case to invoke the 'Polluter pays principle' against the applicant for having operated the unit without taking adequate APC measures which lead to causing of pollution and consequent damage to the environment. However, as stated above, at this stage it is not possible to assess and quantify the damage caused to the environment and hence, considering the nature of activity, capacity to handle the raw material and out turn of the unit, we propose to impose a penalty of Rs. 50,000/- . The amount shall be paid within one month from the date of this judgment into the account of Environment Relief Fund established under Section 24 of the National Green Tribunal Act, 2010.

22. We also feel it necessary to direct the applicant to pay an amount of Rs.50,000/- within one month from the date of this judgment to the concerned DEE of the TNPCB who in turn in liaison with the local District Forest Officer shall ensure that thick vegetation constituting green belt for a width of at least 10 m around the unit is taken up by planting indigenous species suitable for controlling air pollution during the current Monsoon in consultation with the local forest officials.

23. However, considering the fact that the applicant has now completed the works and taken all the required APC measures as reported after conducting the latest inspection on 09.07.2015 by the concerned DEE, it is necessary to direct the TNPCB to consider the application made by the applicant seeking for grant of renewal of CTO in accordance with law and pass orders thereon within a week of payment of aforesaid amounts by the applicant.

24. In the result, application is allowed by issuing a direction to TNPCB to consider the application made by the Applicant seeking for grant of renewal of Consent to Operate (CTO) in accordance with law and pass orders thereon within a week of payment of the amount mentioned below.

Applying the doctrine of 'Polluter Pays' Principle for causing of pollution and consequent damage to the environment, a penalty of Rs.50,000/- is imposed payable by the Applicant within one month from the date of this judgment into the account of Environment Relief Fund, established under Section 24 of the National Green Tribunal (NGT) Act,2010. Apart from that, the Applicant shall also pay an amount of Rs.50, 000/- within one month here from to the concerned DEE, TNPCB who in turn in liaison with the local DFO shall ensure that thick vegetation constituting green belt as referred to in the above judgment.

No Cost.

(Justice M. Chockalingam)
Judicial Member

NGT

(Shri P.S. Rao)
Expert Member

Chennai
Dated 6th August, 2015.