

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.13923 of 2018

and

W.M.P.Nos.16458 and 16460 of 2018

R.Ravimaran

Petitioner

Vs

- 1.Union of India rep. by its
Secretary,
The Ministry of Environment,
Forests and Climate Change,
Jorbagh, New Delhi.
- 2.Tamil Nadu Generation and Distribution
Corporation (TANGEDCO)
rep. by its Chairman cum Managing
Director, 10th Floor,
NPKRR Maaligai, 144, Anna Salai,
Chennai - 2.
- 3.North Chennai Thermal Power Station
rep. by its Chief Engineer,
Athipattu, Chennai
Thiruvallur District - 600 120.
- 4.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
77-A, South Avenue Road,
Ambattur Industrial Estate,
Ambattur Taluk, Chennai - 58
Thiruvallur District.

5.The Tamil Nadu Coastal Zone
Management Authority rep.
by its Member Secretary,
Panagal Building, Chennai.

6.The Public Works Department
rep. by its Secretary,
Fort St. George, Chennai.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the first respondent to effect a comprehensive clean up and remediation of the areas affected by the illegal discharge of ash by the third respondent in Ennore, in violation of the environment (Protection) Act, 1986, compensate the affected people, effect closure of the third respondent thermal power plant at Ennore for violations committed and prosecute the responsible officers in terms of the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974.

For Petitioner ... Mr.A.Yogeshwaran

For Respondents.. Mr.M.Vijayamehanath for R2 & R3
Mr.V.Kadhirvelu,
Spl. Govt. Pleader for R5 and R6
Others - No appearance

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Seeking a direction to the first respondent to effect a comprehensive clean up and remediation of the areas affected by the illegal discharge of ash by the third respondent in Ennore, in violation of the environment (Protection) Act, 1986, compensate the affected people, effect closure of the third respondent thermal power plant at Ennore for violations committed and prosecute the responsible officers in terms of the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974, the present writ petition is filed.

2.This writ petition has been filed in view of the non-availability of the quorum with the National Green Tribunal at the relevant point of time. As submitted by the learned counsel appearing for the petitioner himself, the prayer sought for

before the National Green Tribunal is a comprehensive one. Now, hearing is going on before the Tribunal. A Committee has been constituted and further hearing is going on through video conferencing.

3. Learned counsel appearing for the petitioner would submit that notwithstanding the pendency of the case before the National Green Tribunal, on a petition filed by the very same petitioner, there is no bar in law for passing appropriate orders by this Court. Invoking Article 226 of the Constitution of India is discretionary one and the jurisdiction is extraordinary. Admittedly, the relief sought for before the National Green Tribunal is a larger one. The hearing is also going on and parallel proceedings cannot be allowed to go on. This Court in *Somasekharan Nair Vs. The District Collector, Nagercoil and Others* (2016 SCC Online Mad 25089) was also pleased to hold as follows:

18. Admittedly, the relative of the writ petitioner one Tmt. Thulasibai ammal has filed the writ petitions in W.P(MD)No.10648 and 10649 of 2011 and the same were transferred by this Court to the National Green Tribunal South Zone, Chennai, which was taken on file as Application No.118 of 2013. Since the matter is absolutely involved health, the writ petitioner ought to have go before the National Green Tribunal. To support their case, the respondents have produced a Judgment passed by the Honourable Apex Court in *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others* reported in (2012)8 SCC 326. In the abovesaid Judgment, the Honourable Apex Court held as follows:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short 'the NGT Act?') particuarly Section 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before

NGT. This will help in rendering expeditious and specialised justice in the filed of environment to all concerned."

19. As per abovesaid Judgment of the Honourable Apex Court, we come to the conclusion that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal only and not before this Court under Article 226 of the Constitution of India. Such approach may be necessary to avoid likelihood of conflict of orders between the High Court and National Green Tribunal. After Act of NGT 2010 came into force, the environmental issues and matters covered under the NGT Act, Schedule-I should be instituted and litigated before the National Green Tribunal and this Court have no competent jurisdiction to entertain this writ petition. Accordingly, this writ petition is dismissed with a direction to the petitioner to approach the National Green Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

4. In such view of the matter, we are not inclined to keep this writ petition pending any longer. Accordingly, this writ petition is closed, making it clear that it is for the petitioner to raise all his contentions before the National Green Tribunal. We hope and trust that the National Green Tribunal will expedite the hearing, in view of the submission made by the learned counsel appearing for the petitioner that the proceedings gets delayed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
The Ministry of Environment,
Forests and Climate Change,
Jorbagh, New Delhi.

2.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
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Chennai - 2.

3.The Chief Engineer,
North Chennai Thermal Power Station,
Athipattu, Chennai
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4.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
77-A, South Avenue Road,
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Thiruvallur District.

5.The Member Secretary,
Tamil Nadu Coastal Zone
Management Authority,
Panagal Building, Chennai.

6.The Secretary to Government,
Public Works Department,
Fort St. George, Chennai.

+2cc to Mr.A.Yogeshwaran, Advocate, S.R.No.76270

+1cc to the Government Pleader, S.R.No.76788

W.P.No.13923 of 2018

PA(CO)
GSP(27/11/2018)

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