



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

W.P. (MD) No. 7464 of 2018

and W.M.P. (MD) No. 7125 of 2018

S.P.Muthuraman

... Petitioner

Vs.

1.Ministry of Shipping - Government of India,
Rep.by its Secretary,
Transport Bhawan,
No.1, Parliament Street,
New Delhi 110 001.

2.The Member - Secretary,
Central Pollution Control Board,
Parivesh Bhawan,
CBD cum Office Complex,
East Arjun Nagar,
Delhi 110 032.

3.The Member - Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai 600 032.

4.The District Environmental Engineer - Tuticorin District,
Tamil Nadu Pollution Control Board,
C7 & C9, SIPCOT Campus,
Meelavittan,
Tuticorin 628 008.

5.V.O.Chidambaranar Port Trust - Tuticorin,
Rep.by its Chairman,
V.O.Chidambarnar Port Trust,
Tuticorin 628 004.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 to initiate legal action against the 5th respondent for his failure and violation committed in adhering to the law as well as consequent direction to the 5th respondent to pay compensation for



the environmental damage caused.

For Petitioner : Mr.S.Muthuvairam

For Respondents : Mr.M.Arjunarajan, CGSC., for R1 and R2

Mr.M.Govindan, for R3 and R4

Mr.P.Srinivasan, for R5

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ORDER

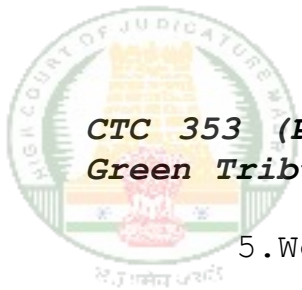
(Order of the Court was made by C.T.SELVAM,J.)

This Writ petition has been filed as probono publico litigation informs that the fifth respondent namely, V.O.Chidambaranar Port Trust, Tuticorin, is classified as highly polluted Ultra Red (Large) category unit and requires consent to operate in keeping with Section 25 of the Water (Prevention and Control of Pollution) Act, 1975 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. Such consent accorded to the fifth respondent expired on 31.03.2015. Thereafter, the fifth respondent earlier permitted in 2007 to handle cargo to the tune of 15.8 million tons per annum has continued to do so and in much larger volumes. On 03.03.2017, the second respondent issued a direction to all State Pollution Control Boards not to allow operations in respect of orange, red and green category units without grant of requisite consent by them.

2.The petitioner complaining that the fourth respondent had failed to comply with the directions of the 2nd respondent seeks issue of a Writ of Mandamus, directing the respondents 2 to 4 to initiate legal action against the 5th respondent for failure and violation committed in adhering to the law as well as consequential direction to pay compensation for the environmental damage caused.

3.Heard learned counsel for petitioner, who reiterated the contentions in the petition and relied on a judgment of the Hon'ble Apex Court reported in **2013(4) SCC 575 (Sterlite Industries (India) Limited Vs. Union of India and others)**, wherein it had been held that for operating a plant without valid permission for a fairly long period, the concerned company would have to compensate by paying damages.

4.On the other hand, learned counsel for 5th respondent submitted that in response to queries of authorities concerned, the 5th respondent has submitted compliance report initially on 05.12.2017 and resubmitted on 28.02.2018. Learned counsel placed before us a copy of the compliance report. Importantly, learned counsel relies on a judgment of this Court reported in **2015 (4)**



CTC 353 (P.Sundararajan etc., Vs. The Deputy Registrar, National Green Tribunal, Chennai).

5.We have considered the rival submissions on either side.

6.Section 14 of the National Green Tribunal Act reads as follows:

"14.Tribunal to settle disputes -

(1)The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule-I.

(2)The Tribunal shall hear the disputes arising from the questions referred to in sub section (1) and settle such disputes and pass order thereon.

(3)No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose."

7.The issue raised by the petitioner thus, squarely falls within the instruction of the National Green Tribunal. In the decision reported in 2015(4) CTC 353 this Court has held as follows:

"7.We have perused the judgment in Major General Shri Kant Sharma's case (supra) and we find that the discussion from para.15 onwards proceeds on the Constitutional scheme under Articles 32, 33, 136, 226 and 227 of the Constitution of India. It recognizes in para 21 that Judicial Review under Article 32/226 is a basic feature of the Constitution beyond the plea of amendability. Thereafter, various judicial pronouncements have been discussed and the conclusions summarised in para.34, which read as under:

"(i)The power of Judicial Review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India. (Ref.L.Chandra and S.N.Mukherjee).

(ii)The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will



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certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Ref.Mafatlal Industries Ltd.,)

(iii) When a Statutory Forum is created by law for redressal of grievances, a Writ petition should not be entertained ignoring the statutory dispensation. (Refer:Nivedita Sharma).

(iv)The High Court will not entertain a petition under Article 226 of the Constitution if an effective remedy is aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refere. Nivedita Sharma)."

8.In view of application of paragraph 7(iii) and 7(iv) reproduced herein above, this petition shall stand dismissed. No costs. Consequently, connected W.M.P.is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

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+1cc to Mr.P.Srinivasan, Advocate SR.No.71737
+1cc to Mr.Yogesh Kannadhasan, Advocate SR.No.71889
Nbj
MK/MMS/SAR 2/16.08.2018/5P/7C

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