

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 33942 of 2018

Karaikal Port Private Limited
CIN No: U45203PY2006PTC001945
Having its registered office at
Kezhavanjoor Village,
T.R.Pattinam, Karaikal,
India - 609 602
rep. By its Authrized Signatory,
Mr. Muralidharan K.,

...Petitioner

Vs.

1. The National Green Tribunal,
Southern Zone Bench,
Kalas Mahal, Kamarajar Salai,
PWD Estate, Chepauk,
Triplicane,
Chennai, Tamil Nadu - 600 005.
2. The Puducherry Pollution Control Committee,
Department of Science, Technology and Environment
Government of Puducherry,
3rd Floor, PH Building, Anna Nagar,
Puducherry - 605 005.
3. The Central Pollution Control Board,
Parivesh Bhavan, Arjun Nagar,
New Delhi - 110 032
4. Ministry of Environment, Forest and Climate Change,
Union of India,
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
5. Union Territory of Puducherry,
Rep. By its Chief Secretary,
Chief Secretariat,
Beach Road, Puducherry - 605 001.

6. The Government of Tamil Nadu
Health and Family Welfare Department,
Namakkal Kavingar Maaligai
Fort St. George, Chennai - 600 009.

7. Shahul Hameed

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent - Hon'ble National Green Tribunal, southern Zone Bench, Chennai culminating in the order dated 05.12.2018 made in Original Application No.08 of 2018(SZ) and quash the same and consequently dismiss the Original Application No. 08 of 20189 (SZ) in the files of the 1st respondent as infructuous.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
for S. Aravindan

For Respondents :R1 - Green Tribunal
Ms. A. Sathya Bama for R2
Ms. M.Swarnalatha for R3
Mr. B. Balavijayan,
Govt.Advocate for R5
Ms.A.Sri Jayanthi,
Spl. Government Pleader for R6
M/s. Vipin Warriar for R7
Tapal Due for R4.

O R D E R

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

This writ petition has been filed by the sixth respondent before the National Green Tribunal in Original Application No.8 of 2018 (SZ), aggrieved over the interim order passed, by which, direction was issued for the constitution of Joint Committee with the participation of Central Pollution Control Board (hereinafter referred as 'CPCB') and the Puducherry Pollution Control Committee (hereinafter referred as 'PPCC'). Incidentally, the private respondent before us, who was the petitioner before the Tribunal, was also permitted to take part during the inspection.

2. The aforesaid order is sought to be assailed before us on the premise that no opportunity was given to put forth the case of the petitioner. Learned Senior Counsel would submit that the main contention of the private respondent is that the petitioner has not established the Mechanised Coal Handling System. However, the same has been done, pursuant to which the PPCC has given consent to operate. Had this fact been brought forth

before the Tribunal, the order would not have been passed. Consequently, it has been submitted that Section 16 of The Air (Prevention of Control of Pollution) Act, 1981 cannot be pressed into service as it is for the State Boards to undertake the aforesaid exercise under Section 17 read with Sections 23 and 24 of the Act. Incidentally, learned Senior Counsel submitted that the Tamil Nadu State Pollution Control Board has got no role to play and, therefore, the said authority is not required to be a part of the Joint Committee.

3. Learned counsel appearing for the private respondent has submitted that Section 16 has to be read along with Section 17. There was already a joint inspection conducted which has given the outer limit for the purpose of establishing Merchandise Coal Handling System. The power of the Tribunal is rather wide. The establishment of the Merchandise Coal Handling System coupled with consent came into being subsequent to the filing of the Original Application before the Tribunal, though consent was granted earlier. Therefore, no interference is required.

4. By way of reply, learned Senior Counsel appearing for the petitioner would submit that without giving opportunity to the petitioner, liberty was given to the authority to take appropriate action based upon the inspection to be made when the petitioner had obtained all necessary consents.

5. Insofar as the constitution of Committee is concerned, we are of the view that the order of the Tribunal does not require interference with specific reference to the Joint Inspection to be made by the CPCB and the PPCC. After all, the power of the Tribunal is plenary qua environmental issues. We also note that such an exercise was already undertaken at an earlier point of time. Therefore, the order of the Tribunal has to be seen in the context of the earlier decision made pursuant to the joint inspection made. It is not as if the petitioner was not aware of the earlier direction made and complied by the Joint Committee. In such view of the matter, we do not find any error with respect to the joint inspection ordered in the presence of the CPCB and the PPCC.

6. However, we make it clear that the role of the CPCB is rather limited as against the PPCC. We do not wish to go much into those things. The report has to be made jointly by both the authorities. They should sit together and prepare the report. Neither the Tamil Nadu Pollution Control Board nor the State of Tamil Nadu has any role to play at this juncture. Therefore, we make it clear that the said authorities are not required to be part of the Committee. As of now, they have not expressed any grievance. In fact, we are of view at this stage that the authority is not required. However, we do not find anything wrong in the presence of the private respondent along with the

Committee during the inspection. After all, it is the private respondent who has raised the issues before the Hon'ble Tribunal, therefore, his presence will help the Committee in filing its report. Though it has been stated that the private respondent has to render assistance to the Committee, it has to be construed that his role is to point out the alleged violation, if any. Accordingly, we clarify the presence of the private respondent to that extent.

7. The only other question to be considered is with respect to the proposed action to be taken. We feel that such an action can be taken after the report is filed before the Hon'ble National Green Tribunal. We request the Hon'ble Tribunal to hear the parties, namely, the petitioner herein and the private respondent, who is the applicant before it, on the report to be filed, copies of which to be furnished, and thereafter pass appropriate orders. Similarly, the petitioner has to be heard before initiating any action on the report.

8. Inasmuch as the Committee has already been constituted, it can make a visit sans the Tamil Nadu Pollution Control Board as directed by the Hon'ble Tribunal and submit the report within a period of six weeks from the date of receipt of a copy of the order before the Hon'ble National Green Tribunal.

In view the above, this writ petition stands disposed of. Consequently, connected WMP. Nos. 1509, 1511 of 2019 and WMP Nos. 39408, 39416 of 2018 stand closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ssm

To

1. The Registrar

National Green Tribunal,
Southern Zone Bench,
Kalas Mahal, Kamarajar Salai,
PWD Estate, Chepauk, Triplicane,
Chennai, Tamil Nadu - 600 005.

2. The Puducherry Pollution Control Committee,

Department of Science, Technology and Environment
Government of Puducherry, 3rd Floor, PH Building, Anna Nagar,
Puducherry - 605 005.

3. The Central Pollution Control Board,
Parivesh Bhavan, Arjun Nagar,
New Delhi - 110 032
4. The Secretary
Ministry of Environment, Forest and Climate Change,
Union of India,
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
5. The Chief Secretary,
Union Territory of Puducherry,
Chief Secretariat,
Beach Road, Puducherry - 605 001.
6. The Secretary to Government
Government of Tamil Nadu
Health and Family Welfare Department,
Namakkal Kavingar Maaligai
Fort St. George, Chennai - 600 009.

+1 CC to M/s. Vipin Warriar, Advocate sr 8417.

+1 CC to Foz Mandal Associates sr 7027.

W.P. No. 33942 of 2018

KAN(CO)
SP(01/02/2019)