



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.04.2022

PRONOUNCED ON :29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.18334, 18340 and 18365 of 2021
and

W.M.P.Nos.19543 and 19544, 19547,
19549, 19573, 19575, 19579 of 2021

M/s.Pappini Amman Traders,
Rep. by its Proprietor,
S.Periyasamy,
R.S.No.200, Alambadi Village,
Kangayam Taluk, Tiruppur District.

... Petitioner in W.P.No.18334 of 2021

M/s.Sri Ram Industries,
Rep by its Proprietor,
S.Loganathan,
R.S.No.445/1,2
Alambadi Village,
KangayamTaluk, Tiruppur District.

... Petitioner in W.P.No.18340 of 2021

M/s.Subbayan and Co Unit II,
Rep by its Managing Partner,
S.Eswaramurthy,
S.F.No.10, Pongalur Village,
Palladam Taluk, Tiruppur District.

... Petitioner in W.P.No.18365 of 2021

Vs

1.The Chairman,
Tamil Nadu Pollution Control Board,
Anna Salai, Guindy,
Chennai.



2.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur North, Tiruppur,
Tiruppur District.

3.The District Collector,
Tiruppur District,
Tiruppur.

4.Ozone Care Public Welfare Association,
Rep.by P.Shathish Kumar,
Periyakattuthottam,
Bagavathipalayam, Veeranampalayam,
Kangeyam, Tiruppur District.

(R4-impleaded vide order dated 18.03.2022 made in
WMP.Nos.22378, 22380 and 22381 of 2021 in
W.P.Nos.18334, 18340 and 18365 of 2021)

... Respondents in all WPs

COMMON PRAYER : Writ Petitions filed under Article 226 of the
Constitution of India, praying to issue a Writ of
Certiorarified Mandamus, to call for the records of the Hon'ble
Green Tribunal order dated 20.11.2020 in the Applications
Nos.17, 24, 285, 286, 287, 288 and 289 of 2013 and 112 and 184
of 2015 and 252 of 2016 and 220 of 2017, dated 20.11.2020 and
quash the same and direct the respondents to proceed the
existing technology for charcoal units.

For Petitioners: Mr.S.Kolandasamy
in all WPs

For Respondents : Mr.N.R.Gokul Krishnan
in all WPs for Mrs.Shanmugavathi Sekar
Senior Counsel for R1&R2 (TNPCB)
Mr.Yogeshwaran for R4

C O M M O N O R D E R

S.SOUNTHAR.J.,

The writ petitioner in all these writ petitions are
running a charcoal unit in Tiruppur District of Tamil Nadu.
Challenging the order passed by Green Tribunal (South Zone) in
original Application Nos.17,24,285, 286, 287, 288 and 289 of
2013 and 112 and 184 of 2015 and 252 of 2016 and 220 of 2017,
dated 20.11.2020, where-under, the Green Tribunal directed all
the charcoal units operating in State of Tamil Nadu and other
southern States to shift over to "above ground level technology"
as per the design approved either by the Indian Institute of



Technology, Chennai or Anna University and till then the charcoal units were directed not to operate with the old "below ground level technology", the present petitions have been filed to quash the same with additional prayers therein.

WEB COPY

2. According to the petitioners, they were not party to the proceedings in which the above order was passed. It was submitted by the petitioners that burning of coconut shell is a common practice being followed in every household and the process followed by them for conversion of coconut shell to charcoal is a safe method which will not endanger the environment. It was also submitted that they have been running the unit after getting due consent from the second respondent under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of Water (Prevention and Control of Pollution) Act 1974. It was also submitted that they have all safety measures and provided chamber with chimney for the discharge of emission generated from the pith. The unit has also been installed with a scrubber with stack to arrest the dusts and particulate emission. The unit is also provided with adequate number of water sprinklers for controlling the dust emission during loading and unloading of material and the sprinkled water is collected in tank by gravity and reused for quenching.

3. Learned counsel for the petitioner submitted that when charcoal units were peacefully operating in Kangeyam Taluk, Tiruppur District, some persons who developed inimical business relationship with the charcoal unit owners disturbed the charcoal unit of one Balasubramanian and therefore, he approached this Court in W.P.No.29472 of 2012 and the case was transferred to National Green Tribunal (southern zone).

4. When the matter was heard by NGT (sz), it constituted an expert committee to suggest new design and technology for charcoal unit operating in southern States to minimize pollution. The Tribunal by interim order restrained operation of charcoal manufacturing units till the submission of report by expert committee. Subsequently, based on the expert committee report, the Tribunal passed a final order dated 20.11.2020, directing all the charcoal units operating in southern States to adopt new "above ground level technology" as per the recommendations and conditions mentioned in expert committee report and till they adopt new technology, they should not operate the units. The petitioners mainly assailed the order of the Green Tribunal on the ground that such an order violates the rights of the petitioner to carry on any Trade or business under Article 19(1) (g) of the Constitution of India.



5. It was also argued on behalf of the petitioners that all the petitioners have been operating charcoal unit with old technology for considerable length of time and Green Tribunal ought to have granted a breathing time to adopt a new technology. It was also submitted that charcoal industry is a non-toxic one and hence the Tribunal ought not to have suspended operation of units. An arguments was also made that the order passed by the National Green Tribunal is applicable to the proposed new units and it will not cover the existing units, who are all running a charcoal unit with a valid consent under both Air and Water Act.

6. The respondents 1 and 2 filed a detailed counter and opposed the writ petitions by supporting the order passed by the NGT (sz). It was submitted that the said order was passed based on the recommendations of the expert committee appointed by the National Green Tribunal, which found that the old crude method adopted by the petitioner (below ground level technology) caused significant water and air pollution and in order to prevent further damage to the environment, in the interest of the persons especially the agriculturists in the locality, the said order was passed and therefore, the writ petition is liable to be dismissed.

7. Learned counsel for the impleaded 4th respondent filed a memo of submissions and opposed the writ petitions. According to him, the petitioners have been following the crude "below the ground level" method for manufacture of charcoal from coconut shells and this method was identified by expert committees appointed by NGT and Tamil Nadu Pollution Control Board, as causing water and Air Pollution. It was also submitted that the writ petitioners suppressed the fact that they are all members of charcoal manufacturers society, which was impleaded before NGT and filed the pleadings in those proceedings. The said Association has also submitted the design for "above ground level" manufacturing technology to expert committee and participated in the process of evolution of design of the "above ground level technology". The writ petitioners have attempted to project a case as if they were all strangers to the NGT proceedings and in fact the writ petitioners' names found place in the members list of the above said society.

8. Learned counsel for the 4th respondent also submitted that the Tamil Nadu Pollution Control Board, vide its directions dated 06.12.2012 directed all the charcoal manufacturing units to follow the above ground level method for manufacturing and in fact the Pollution Control Board issued a memo dated 07.03.2021, specifically, mentioning finalised design and guidelines for charcoal units. The directions issued by Tamil Nadu Pollution Control Board to charcoal manufacturers to



adopt to the "above ground level technology" was not at all challenged by any of these industries and therefore, they are bound to follow the same. It was also submitted that the industrial unit has got no right to demand that they would follow only a crude and inherently polluting technology as against the new non polluting technology. The impugned order passed by NGT has taken into consideration the interest of the industries and also the interest of general public and that is why instead of absolute closure of the units it has given them an option to adopt modern non-polluting process vetted and evolved by expert agencies as a condition for continuance of the operations. Hence, it was submitted that the petitioners could not be allowed to operate the charcoal manufacturing units by following a old below ground level technology even for a day without adopting a modern above ground level technology.

9. We have perused the pleadings of the parties along with the typed set, report of the expert committee and the impugned order passed by the NGT.

10. The expert committee constituted by Tamil Nadu Pollution Control Board in its report had recommended as follows: Recommendations of the Committee:

All the existing consented units of TNPC Board adopting open earthen pit [batch process] can implement the proposals submitted by M/s.United Carbon, 1175 Ciyan Kadu, Vellavaiparai, Dharapuram Road, Kangeyam, dated 23.05.2016, M/s.Tiruppur District Coconut shell manufacturer Association dated 23.05.2016 (being one and the same) subject to the following modifications:

(1) The modernized elevated open pit shall be lifted above 1000mm from ground level and the water quenching tank shall be above ground level of not less than 500 mm;

(2) The charcoal pit/pits, firing chamber, oil mist eliminator and venturi wet scrubber shall essentially have pressure releasing valves;

(3) Suitable non return valves shall be provided in the system to prevent back fire;

(4) Ash tray to be provided beneath the chimney to collect ash generated;

(5) I D fan attached to chimney to be provided with damper valve;

(6) Platform with port hole arrangement in the chimney to monitor process emission.

11. One of the key recommendations of the committee was adoption of the above ground level technology, the drawing



in modernized elevated charcoal pit is also enclosed in the report. Subsequently, the Pollution Control Board also filed a report before the National Green Tribunal on 28.10.2016, wherein it recommended that the height of charcoal pit/carbonizer above ground level of either 500 mm or 3000 mm is acceptable as long as the quenched water is collected and recycled.

12. The National Green Tribunal, after considering the opinion of the expert committee and also of the second respondent Pollution Control Board, in its order observed as follows:

"88. Merely because the proposed technology of switch over to the above ground level process will have some more expenditure for the units will not be a ground for allowing the units to continue with the present process which will have more impact on environment as well as health of the people. If the expert bodies suggestion for switching over of the technology by providing certain citing criteria, number of chambers to be used instead of continuous batch process, then the same will have to be implemented by the units so as to protect the environment.

89. So under these circumstances, instead of directing them to close down the units permanently, this Tribunal is of the opinion that the units can be directed to adopt the recommendations made by the committee dated 19.02.2020 which was extracted above with modification if any, imposed by the Pollution Control Board and further suggested by the Joint Committee Report as per order dated 08.06.2020, which was received by this Tribunal on 13.08.2020."

13. After observing so, the NGT (sz) ultimately directed all charcoal units operating in State of Tamil Nadu and other southern States to adopt the above ground level technology with recommendations and conditions imposed by the committee, pursuant to the order dated 19.02.2020 and 30.09.2020. It was also made clear that till they adopt new technology, the units shall not operate.

14. The right to clean environment is held to be part of right to life under Article 21 of the Constitution of India. When we all have a right to clean environment, the corollary of the same is our duty to maintain clean environment to enable other persons/citizens to enjoy the said right. We the present generation are only the trustees of the mother earth and we must



pass on very same environment which we enjoy today, to our future generation without any deterioration in its quality. Of course, the economic development is a fundamental thing for prosperity of human beings. But the mother earth's clean environment is the fulcrum of all future development and prosperity. Hence, in the guise of development and economic well being, we should not destroy the fulcrum of our well being. In order to sustain development, we have to maintain a delicate balance between the economic development and environmental protection.

15. The petitioners cannot complain that direction to adopt new non-polluting technology would amount to unreasonable restrictions on their right to carry on the business of their choice. It was held in Arjun Gopal and others Vs. Union of India reported in 2019 (13) SCC 523 that right to clean environment is one of the essential facet of right enshrined under Article 21 of the Constitution of India. Article 21 is to be given supremacy over the right to carry on business under Article 19(1) (g) of the Constitution. The observations of the Apex Court in this regard are as follows:

"41. It may be stressed that in Vellore Citizens' Welfare Forum case, this Court had banned the tanneries when it was found that they were causing immense damage to the environment. Thus, environment protection, which is a facet of Article 21, was given supremacy over the right to carry on business enshrined in Article 19(1) (g). We state at the cost of repetition that right of health, which is recognised as a facet of Article 21 of the Constitution and, therefore, is a fundamental right, assumes greater importance. It is not only the petitioners and other applicants who have intervened in support of the petitioners but the issue involves millions of persons living in Delhi and NCR, whose right to health is at stake. However, for the time being, without going into this debate in greater details, our endeavour is to strive at balancing of two rights, namely, right of the petitioners under Article 21 and right of the manufacturers and traders under Article 19(1)(g) of the Constitution."

16. It is also pertinent, in this context, to refer to the observations of the Apex Court in M.C.Metha Vs. Union of India, reported in (2019) 17 Supreme Court Cases 490, which is as follows:



WEB COPY

It is an established principle of law that the right to life, as envisaged under Article 21 of the Constitution of India includes the right to a decent environment. It includes within its ambit the right of a citizen to live in a clean environment. With regard to vehicular traffic, this Court has issued a number of directions to ensure a clean environment and reduce pollution. It has been held that the right to clean environment free from smoke and pollution follows from the "quality" of life which is an inherent part of Article 21 of the Constitution. The right to live with human dignity becomes illusory in the absence of a healthy environment. The right to life not only means leading a life with dignity but includes within its ambit the right to lead a healthy, robust life in a clean atmosphere free from pollution. Obviously, such rights are not absolute and have to co-exist with sustainable development. Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists.

In the light of the above observation, it is not open to the petitioners to complain that a direction to adopt a new non-polluting technology would be an unreasonable restrictions on the right to carry on the business of their choice.

17. Our Country with 2.4 percent of global surface area has to support 17.7% of world population. Hence, the need to maintain correct balance between economic development and protection of environment is much more relevant in our country. In order to strike a correct balance, the Apex Court propounded the Doctrine of sustainable development and the same was explained in *N.D.Jayal and another Vs. Union of India* and others, reported in (2004) 9 Supreme Court Cases 362, are as follows:

"22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens Welfare Forum v. Union of India*, [1996] 5 SCC 647, and in *M C Mehta v. Union of India*, [2002] 4 SCC 356, it was observed that the balance between



WEB COPY

environmental protection and developmental activities could only be maintained by strictly following the principle of 'sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.....

25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like inter-generational equity State of Himachal Pradesh v. Ganesh Wood Products, [1995] 6 SCC 363, public trust doctrine M C Mehta v. Kamal Nath, [1997] 1 SCC 388 and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

(iv) It is also appropriate to refer to the decision in Vellore Citizens' Welfare Forum Vs. Union of India reported in (1996) 5 SCC 647, wherein the Hon'ble Apex Court observed as follows:

"10. The traditional concept that development and ecology are opposed to each of her, is no longer acceptable. "Sustainable Development is the answer. In the International sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called Court Common Future. The Commission was chaired by the then Prime



WEB COPY

Minister of Norway Ms. G.H. Brundtland and as such the report is popularly known as "Brundtland Report" 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non binding documents namely, a Statement on Forestry Principles a declaration of principles on environmental policy and development and initiatives and Agenda 21 a programme of action into the next century in areas like poverty, population and pollution. during the two decades from Stockholm to Rio "sustainable Development" and came to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. "sustainable Development: as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" As a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient feature have yet to be finalised by the International Law Jurists.

11. Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Nature Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means.



WEB COPY

(i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental depredation.

iii)The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign."

18. In the light of the above decisions of the Apex Court, it is made clear that the Court should strike a balance between economic development and protection of environment while considering the issues relating to pollution allegedly caused by industries. In the present case, while passing impugned order, by allowing the petitioners to operate by adopting new technology, the National Green Tribunal adopted a cautious approach by following principle of sustainable development.

19. The State has a duty to protect environment as it is the trustee to protect the environment by adopting the concept of public trust. The State has to preserve the natural resources and environment, for the enjoyment of the general public and also the future generation. The doctrine of public trust was explained by the Apex Court in the decision reported in (1997) 1 Supreme Court Cases 388 in M.C.Metha Vs. Kamal Nath. The observations of the Apex Court in this regard are as follows:

"24. The ancient Roman Empire developed a legal theory known as the "Doctrine or the Public Trust. It was founded on the ideas that certain common properties such as rivers, sea- shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public.

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air sea, waters and the forests have such a great importance to the people as a whole that it would be wholly*** unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. "



20. Taking into consideration this delicate balance, the NGT without ordering the total closure of charcoal units only imposed a condition that they must adopt a modern technology to lessen the pollution and allowed them to continue to operate.

21. In the light of the discussions made above, there is no illegality in the order passed by the NGT and the grounds raised by the petitioners for impugning the same are devoid of merits.

22. At the conclusions of the arguments, learned counsel for the writ petitioners submitted that the petitioners are ready to adopt the above ground level technology within three months and they may be allowed to operate till that time.

23. In view of the order passed by the NGT, the petitioners are not operating the units for considerable length of time (for more than one year). Now, they have come forward to adopt the new technology within a period of three months. In view of the fact that the petitioners have already stopped manufacturing charcoal by following old below ground level technology, there is no imminent necessity to permit them to operate till they adopt new technology within the time frame indicated above.

24. Therefore, the writ petitions are disposed of with a direction to the petitioners to adopt the new above ground level technology while operating charcoal manufacturing units as per the order of NGT (sz), dated 20.11.2020 within three months from the date of receipt of a copy of this order. On such adoption of new technology and complying other statutory formalities, the petitioners are entitled to operate charcoal manufacturing unit. Consequently connected Miscellaneous Petitions are Closed. No costs.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

ub

To

1.The Chairman,
Tamil Nadu Pollution Control Board,
Anna Salai, Guindy,
Chennai.



2.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur North, Tiruppur,
Tiruppur District.

3.The District Collector,
Tiruppur District,Tiruppur.

+lcc to Mrs.Shanmugavathi Sekar, Advocate, S.R.No.30198

W.P.Nos.18334, 18340 and 18365 of 2021

JP[co]
NSK/21/06/2022