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W.P.No.10495 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2023

Pronounced on: 12.04.2023

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.10495 of 2020

and

W.M.P.Nos.13720 and 13721 of 2020,

W.M.P.No.19593 of 2021,

W.M.P.Nos.17957 and 25448 of 2022

ITC Limited
having its manufacturing Unit at
S.F.No.423/5, Vivekanandapuram,
Thekkampatty Village,
Mettupalayam Taluk,
Coimbatore - 641 113.

...Petitioner

VS.

1.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Coimbatore North,
Opposite to Fire Station,
Kavundampalayam,
Coimbatore.



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2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai - 600 032.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the 2nd respondent ending with Proceedings No.T1/TNPCB/F.0038/CBN/RL/W & A/2020, dated 17.03.2020 and quash the same.

For Petitioners : Mr.C.Manishankar,
Senior Counsel
for M/s.Rahul M. Shankar

For Respondents : Mr.R.Shunmuga Sundaram
Advocate General
assisted by Mrs.Shanmughavalli Sekar
Standing Counsel for
Pollution Control Board

Mr.A.Deivasigamani
for impleading party



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ORDER

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(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

This Writ Petition has been filed seeking for a Writ of Certiorari to call for the records on the file of the 2nd respondent in Proceedings No.T1/TNPCB/F.0038/CBN/RL/W & A/2020, dated 17.03.2020, quash the same and for consequential orders.

2. The case of the petitioner company is that it is indulging in manufacture of paper boards. Originally, it was being run by an entity called BILT Industrial Packaging Limited. It was taken over by the petitioner and after investment of huge sum of money, it has developed the manufacturing process. According to the petitioner, it is strictly complying with all the TNPCB norms, taking into consideration the impact on the environment. The petitioner claims that it has been the recipient of several awards for its "Green Initiation". The affidavit further states that between 06.01.2020 and 08.01.2020, the officials belonging to the 2nd respondent conducted a



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surprise inspection. At that time, it came to its knowledge that the

National Green Tribunal (hereinafter referred to as the NGT),

Southern Zone, had passed an order directing inspection. This order

was passed on 13.12.2019. The petitioner had co-operated with the

Officials and a detailed inspection report had been prepared. It

further states that pursuant to the inspection, the 1st respondent,

District Environmental Engineer, Tamil Nadu Pollution Control

Board had issued two Show Cause Notices on 10.01.2020, pointing

out several deficiencies under the Air (Prevention and Control of

Pollution) Act, 1981 (hereinafter referred to as the Air Act) and Water

(Prevention and Control of Pollution) Act, 1974 (hereinafter referred

to as the Water Act).

3. On receipt of the said notices issued by the 1st respondent (Page Nos.284 to 286 of the typedset of papers), a detailed reply was given to the Show Cause Notices by the petitioner (Page Nos.288 and 297 of the typedset of papers) dated 31.01.2020.



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4. According to the petitioner, without reference to its reply dated 31.01.2020, the 2nd respondent had issued the impugned order on 17.03.2020. As per the impugned order, the petitioner has been directed to pay a sum of Rs.331.80 lakhs as damages and an additional amount of Rs.30,000/- per day until the compliance of the said demand. Alleging violation of principles of natural justice and non-consideration of the reply, the present Writ Petition has been filed.

5. The respondents 1 and 2 filed counter affidavit stating that the petitioner has an alternate remedy under Section 28 of the Water Act and Section 31 of the Air Act. Apart from that, it was pleaded that the Board has jurisdiction to impose environmental compensation. In this regard, the learned Advocate General placed reliance upon the order of the NGT in Appeal No.21 of 2019 dated 27.07.2020. It conceded to the fact that the impugned order was issued in terms of the Show Cause Notices issued under the Water Act and the Air Act dated 10.01.2020 and that the petitioner is trying



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to wriggle out of its liability by filing the Writ Petition. The counter also relied upon the order of the NGT to ascertain that since the interim compensation had been calculated by the Joint Inspection Committee appointed by the order of NGT dated 13.12.2019 and the formula had also been incorporated in the said report, it merely implemented the same. It further added that after passing of the impugned order, the Board had called for personal meetings on 10.06.2020 at its Office at Guindy. The meetings proposed during June and July were not conducted due to Covid 19 pandemic. Therefore, it conducted a meeting on 07.08.2020 and the request of the petitioner to waive was not considered. On these grounds, the respondents sought for dismissal of the Writ Petition.

6. The petitioner filed a detailed response pointing out that it had complied with the conditions and has given the details (Para 7 of their reply to the Status Report).



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7. We heard Mr.C.Manishankar, learned Senior Counsel for Mr.Arun Prasad and Mr.R.Shanmugha Sundaram, learned Advocate General for Mrs.Shanmughavalli Sekar, learned counsel for the respondents.

8. Before we go into the case on hand, we have to point out one E.Ashok Raj Kumar and two others sought to implead in this proceedings by filing W.M.P.No.19593 of 2021. This Writ petition seeks a Writ of Certiorari where the impugned order passed by the respondent is being challenged on the aforesaid ground. In this case, persons, who are unconnected to the proceedings are neither necessary nor proper. It might be true that the proposed parties were original applicants in O.A.No.26 of 2019. With respect to the matter before this Court, the NGT by its order dated 28.05.2021 had held as follows:

"..(iii)As regards the compensation is concerned since the matter is sub-judice and pending before the Hon'ble High Court of Madras in W.P.No.10495 of 2020 we are not passing any order regarding the same and



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that will be subject to final order passed by the Hon'ble High Court in the above Writ Petition and also on that Tamil Nadu Pollution Control Basis is directed to take action against the 12th respondent in respect of the same subject to the result of the Writ Petition mentioned above."

9. This shows that it is essentially a dispute between the writ petitioner and the respondents. In such an event, we consider the presence of the proposed parties as neither necessary nor proper. The petitioner has not challenged the order of the NGT. Thus, in these proceedings, the petitioners are not necessary parties and hence, Writ Miscellaneous Petition No.19593 of 2021 stands dismissed.

10. At the time of admission, this Court has passed the following orders:

"Notice to the respondents returnable by
18.09.2020.



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2.Mr.C.Manishankar, learned Senior Counsel

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appearing for the petitioner states that the impugned order suffers from violation of principles of natural justice inasmuch as neither the petitioner was put on notice nor the Joint Committee Report which emanated in the impugned order was given. Further, in the impugned order the petitioner has been asked to pay huge sum of fine, thus the impugned order has civil consequences.

3.Considering the above, there shall be an order of interim stay, however the petitioner shall comply with the defects pointed out in the meanwhile. The submission made by the learned Senior Counsel that the defects pointed out are nearing compliance stands recorded."

11. Mr.C.Manishankar, learned Senior Counsel at the time of hearing of the Writ Petition, submitted that whatever conditions that



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have been imposed on the petitioner to comply to prevent environmental damage has been complied with. He raised a grievance that the petitioner has been called upon for the supply of x-ray machines to the respondents, so as to be installed in the office of the Port Trust. These issues are not the subject matter of this Writ Petition. We record the fact that the petitioner has stated that it will comply with all the requirements, which are necessary for prevention of environmental damage and its protection.

12. The learned Advocate General pointed that, out of 21 deficiencies only 11 deficiencies have been complied with. As the petitioner has given an undertaking to this Court on 21.08.2020 that it would comply with the defects pointed out, we only reiterate the same and direct the petitioner to comply with whatever deficiencies that is pointed out by the respondents.

13. Insofar as the challenge to the proceedings dated 17.03.2020 is concerned, it has to be pointed out that the same is based on the Joint Committee Report prepared pursuant to the interim



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order of the NGT in O.A.No.26 of 2019 dated 13.12.2019. It is on

record that the order for the Joint Inspection was an *ex parte* order and the petitioner came to know the same only at the time of inspection between 06.01.2020 to 08.01.2020. The Show Cause Notices dated 10.01.2020 were issued immediately after the Joint Inspection and the petitioner has also given a reply on 31.01.2020. The petitioner was heard by the NGT for the first time on 27.01.2020. On that date, the interim report had been filed and time was taken for filing of a detailed report. The detailed report was filed on 13.03.2020 and within four days, the Demand Notice has been issued.

14. The counter of the respondents would go to show that after issuance of Demand Notice, the petitioner was called for hearing in June, July and August 2020.

15. Prior to fixation of damages, the petitioner was not heard. Damages has civil consequences and the impugned order also states that in addition to the sum of Rs.331.80 lakhs, a daily penalty of Rs.30,000/- would be levied. The order also does not refer to the reply given by the petitioner on 31.01.2020.



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WEB COPY 16. A perusal of the impugned order shows in the reference portion, it only refers to the order of the NGT, the Show Cause Notice dated 10.01.2020, the interim report filed on 27.01.2020 and the order of the 1st respondent dated 13.03.2020. There is no reference, to reiterate, to the detailed response running into several pages. It is expected that the respondents should refer to the same and either reject or accept before fastening any liability.

17. We enquired with the learned Advocate General if any notice has been issued to the respondents before fixation of the compensation. He took us to the order of the NGT and pointed out that as the Joint Inspection Committee had fixed the liability, the Tamil Nadu Pollution Control Board merely implemented the same. The Joint Inspection Committee was appointed by the NGT to satisfy itself if there are any deviation from the conditions imposed by the respondents in the consent to operate and if there are any deficiencies in the manner of implementing the consent. That is the



report filed before the NGT to satisfy itself on the allegations made by the applicants. As already pointed out, the order appointing Joint Inspection was an *ex parte* order. The petitioner had co-operated with the inspection and did not fight shy of the same. The conclusions of the Joint Inspection Committee are merely recommendatory and it is not final or binding, even on the NGT let alone the respondents. The order of the NGT dated 28.05.2021 extracted supra shows that, it had left open the issue of compensation directed to be paid under the impugned order to be decided on the basis of the final order of this Writ Petition. Since the respondents did not consider the reply of the writ petitioner nor had it heard the petitioner prior to the fixation of the liability, it is a clear case of violation of principles of natural justice. It is too well settled that where there is violation of principles of natural justice, a Writ Petition would lie and the petitioner need not be pushed to avail the alternative remedy under the Act. Therefore, we hold that this Writ Petition is maintainable as the respondents have not complied with the basic norms of the principles of natural justice.



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WEB COPY 18. The learned Advocate General argued that the respondents had the jurisdiction to impose damages and drew our attention to the order of the NGT in O.A. No. 26 of 2019. We have no doubt that the 2nd respondent does have jurisdiction to impose penalty for any damage that had taken place to the environment. However, prior to imposing such damages, it is the duty of the respondents to hear the petitioner, consider the reply and thereafter pass a detailed speaking order containing reasons. In the present case, the impugned order merely paraphrases the order of the Joint Inspection Committee of the NGT and has been passed in utter violation of the principles of natural justice. Perhaps such urgency was shown because the proceedings were pending before the NGT.

19. Consequent to the above discussion, we pass the following orders:

(1)The order dated 17.03.2020 is set aside. The matter is remanded to the 2nd respondent. The 2nd respondent shall issue notice to the petitioner and fix the



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date of hearing on which day the petitioner shall appear and give its explanation.

(2).If the petitioner does not avail this opportunity the respondents can proceed and pass orders.

(3).The 2nd respondent shall pass a detailed speaking order taking into consideration all aspects including the Joint Inspection Report but the order shall not be predicated only on the basis of the Joint Inspection Report done presently.

(4).This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

This Writ Petition is allowed with the aforesaid directions. Consequently, connected Miscellaneous Petitions are closed. No costs.

(V.M.V., J) (V.L.N., J)
12.04.2023



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To

1.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Coimbatore North,
Opposite to Fire Station,
Kavundampalayam,
Coimbatore.

2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
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V.M.VELUMANI,J.
and
V.LAKSHMINARAYANAN,J.

mps

Pre-delivery Orders in
W.P.No.10495 of 2020
and
W.M.P.Nos.13720 and 13721 of 2020,
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