



W.P.No.34307 of 2022, etc., batchN.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgement Reserved on : 10..04..2023 &
13..04..2023

Judgement Pronounced on : 27..04..2023

Coram

The Honourable MS.JUSTICE V.M.VELUMANI
AND

The Honourable MR. JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.34307, 34312, 34316, 34320, 34793, 34796 of 2022,
1206, 1211, 1215, 1214, 1218, 1220, 1222, 1258, 1263, 1265,
1271, 1264, 1269, 1276, 1280, 1268, 1273, 1279, 1282, 1286,
1288, 1292, 1297, 1299, 1304, 1300, 1305, 1309, 1310, 1312,
1464, 1466, 1469, 1812, 1816, 1817, 1819, 1818, 1864, 1869,
1873, 1865, 1870, 1874, 1996, 2000, 2005, 2003, 2013, 2018,
2023, 2027, 2038, 2019, 2032, 2035, 2037, 2039, 2055, 2059,
2062, 2349, 2358, 2361, 2365, 2378, 2383, 2439, 2444, 2447,
2451, 2455, 2446, 2459, 2465, 2452, 2457, 2461, 2467, 2470,
2477, 2555, 2561, 2564, 2572, 2576, 2583, 2621, 2626, 2629,
2647, 2652, 2655, 2646, 2654, 2660, 2661, 2666, 2670, 2949,
2953, 2956, 2988, 2991, 2997, 2999, 2993, 2998, 3005, 3254,
3257, 3259, 3262, 3944, 3946, 3948, 3951, 4313, 4316, 4319,
4320, 4323, 4546, 4554, 4557, 4562, 4564, 4568, 5073, 5075,
11285 & 11288 of 2023

and

W.M.P.Nos.33769, 33776, 33780, 33785, 34216, 34222 of 2022,
1243, 1249, 1253, 1252, 1257, 1261, 1264, 1271, 1272, 1278,
1279, 1283, 1284, 1290, 1291, 1280, 1282, 1292, 1294, 1299,
1301, 1306, 1308, 1288, 1289, 1295, 1296, 1303, 1304, 1309,
1310, 1316, 1319, 1331, 1337, 1343, 1348, 1323, 1344, 1345,
1349, 1350, 1351, 1352, 1353, 1354, 1355, 1357, 1554, 1555,
1558, 1559, 1564, 1566, 1933, 1934, 1930, 1936, 1935, 9202,



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1967, 1973, 1980, 1969, 1976, 1981, 2080, 2083, 2086, 2097,
2099, 2104, 2106, 2111, 2113, 2123, 2124, 2135, 2136, 2090,
2091, 2103, 2125, 2126, 2130, 2132, 2145, 2148, 2150, 2415,
2417, 2429, 2430, 2434, 2436, 2442, 2444, 2460, 2461, 2468,
2470, 2538, 2547, 2553, 2557, 2561, 2565, 2571, 2551, 2558,
2563, 2569, 2573, 2575, 2580, 2653, 2658, 2663, 2667, 2670,
2674, 2688, 2695, 2698, 2728, 2735, 2743, 2724, 2726, 2739,
2740, 2751, 2752, 2754, 2755, 2759, 2760, 2770, 2771, 3056,
3057, 3060, 3093, 3099, 3103, 3109, 3102, 3108, 3113, 3307,
3310, 3312, 3315, 4009, 4011, 4015, 4021, 4353, 4355, 4357,
4360, 4363, 4550, 4555, 4560, 4563, 4566, 4571, 5094, 5097,
11164, 11165, 11168 & 11169 of 2023

K.Saravanan
Sole Proprietor of MVN Bricks,
88/3, Chinnathadagam Village,
Thadagam (PO),
Coimbatore 641 108.

..... Petitioner in W.P.No.34307 of 2022

-Versus-

- 1.The Principal Secretary to Government of
Tamil Nadu,
Industries Department,
Government Secretariat,
Fort St. George,
Chennai 600 009.
- 2.The Secretary to The Government of Tamil Nadu,
Department of Environment & Forests,
Government Secretariat,
Fort St. George,
Chennai 600 009.



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3. The Chairperson,
Tamil Nadu Pollution Control Board,
No.76, Anna Salai,
Guindy, Chennai 600032.

4. The District Environmental Engineer,
Tamil Nadu Pollution Control Board
Coimbatore North
No.5, Ramasamy Nagar,
Kavundampalayam,
Coimbatore 641 030.

5. The Joint Chief Environmental Engineer,
Tamil Nadu Pollution Control Board\
Coimbatore North,
4th Floor, No.34, Bharathi Park 8th Cross Street,
Saibaba Colony, Coimbatore 641 011.

6. The District Collector,
Coimbatore District,
Coimbatore 641 018.

... Respondents in W.P.No.34307 of 2022

Prayer in W.P.No.34307 of 2022:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 3rd respondent in proceedings No.T2/TNPCB/F.24093/Brick kiln/82/CBN/2019, dated 25.07.2022 and all proceedings in furtherance thereof, including but not limited to the order passed by the 3rd respondent in Proceedings No.T2/TNPCB/F.24093/Brick Kiln/82/CBN/Directions/2019, dated 06.12.2022 and to quash the same as arbitrary, unjust and illegal.



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.34307 of 2022	Mr.S.Parthasarathy, Senior Counsel for Mr.Suhrith Parthasarathy	Dr.T.Seenivasan, Spl. Government Pleader for RR1 & 2
W.P.No.34312 of 2022		
W.P.No.34316 of 2022		
W.P.No.34320 of 2022		
W.P.No.34793 of 2022		
W.P.No.34796 of 2022		
W.P.No.1206 of 2023		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR3 to 5 & Mr.M.R.Gokul Krishnan
W.P.No.1211 of 2023		
W.P.No.1215 of 2023		
W.P.No.1214 of 2023		
W.P.No.1218 of 2023		
W.P.No.1220 of 2023		
W.P.No.1222 of 2023		
W.P.No.2439 of 2023		
W.P.No.2444 of 2023		
W.P.No.2447 of 2023		
W.P.No.2451 of 2023		
W.P.No.2455 of 2023		
W.P.No.2446 of 2023		
W.P.No.2459 of 2023		
W.P.No.2465 of 2023		
W.P.No.2452 of 2023		
W.P.No.2457 of 2023		
W.P.No.2461 of 2023		
W.P.No.2467 of 2023		
W.P.No.2470 of 2023		
W.P.No.2477 of 2023		



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.4546 of 2023		Mr.A.Selvendran, Spl. Government Pleader for R6
W.P.No.4554 of 2023		
W.P.No.4557 of 2023		
W.P.No.4562 of 2023		
W.P.No.4564 of 2023		
W.P.No.4568 of 2023		

	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.1258 of 2023	Mr.N.Murali Kumaran, Senior Counsel for M/s.McGAN Law Firm	Dr.T.Seenivasan, Spl. Government pleader for RR1 & 2
W.P.No.1263 of 2023		
W.P.No.1265 of 2023		
W.P.No.1271 of 2023		
W.P.No.1264 of 2023		
W.P.No.1269 of 2023		
W.P.No.1276 of 2023		
W.P.No.1280 of 2023		
W.P.No.1268 of 2023		
W.P.No.1273 of 2023		
W.P.No.1279 of 2023		
W.P.No.1282 of 2023		
W.P.No.1286 of 2023		
W.P.No.1288 of 2023		
W.P.No.1292 of 2023		
W.P.No.1297 of 2023		
W.P.No.1299 of 2023		
W.P.No.1304 of 2023		



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.1300 of 2023		Mr.A.Selvendran, Spl. Government Pleader for R6
W.P.No.1305 of 2023		
W.P.No.1309 of 2023		
W.P.No.1310 of 2023		
W.P.No.1312 of 2023		
W.P.No.1464 of 2023		
W.P.No.1466 of 2023		
W.P.No.1469 of 2023		
W.P.No.1864 of 2023		
W.P.No.1869 of 2023		
W.P.No.1873 of 2023		
W.P.No.1865 of 2023		
W.P.No.1870 of 2023		
W.P.No.1874 of 2023		
W.P.No.1996 of 2023		
W.P.No.2000 of 2023		
W.P.No.2005 of 2023		
W.P.No.2055 of 2023		
W.P.No.2059 of 2023		
W.P.No.2062 of 2023		
W.P.No.2555 of 2023		
W.P.No.2561 of 2023		
W.P.No.2564 of 2023		
W.P.No.2572 of 2023		
W.P.No.2576 of 2023		
W.P.No.2583 of 2023		
W.P.No.2621 of 2023		
W.P.No.2626 of 2023		



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.2629 of 2023		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR3 to 5 & Mr.M.R.Gokul Krishnan
W.P.No.2647 of 2023		
W.P.No.2652 of 2023		
W.P.No.2655 of 2023		
W.P.No.2988 of 2023		
W.P.No.2991 of 2023		
W.P.No.2997 of 2023		
W.P.No.2999 of 2023		
W.P.No.2993 of 2023		
W.P.No.2998 of 2023		

	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.11285 of 2023	Mr.R.Hari Krishnan for M/s.McGan Law Firm	Dr.T.Seenivasan, Spl. Government pleader for RR1 & 2
		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR3 to 5 & Mr.M.R.Gokul Krishnan
W.P.No.11288 of 2023		Mr.A.Selvendran, Spl. Government Pleader for R6

	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.1812 of 2023		Dr.T.Seenivasan, Spl. Government pleader for RR1 & 2
W.P.No.1816 of 2023		



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.1817 of 2023	Mr.N.Sridhar for Mr.R.Bharathkumar	
W.P.No.1819 of 2023		
W.P.No.1818 of 2023		
W.P.No.2019 of 2023		
W.P.No.2032 of 2023		
W.P.No.2053 of 2023		Mr.A.Selvendran, Spl. Government Pleader for R6
W.P.No.2037 of 2023		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR3 to 5 & Mr.M.R.Gokul Krishnan
W.P.No.4313 of 2023		
W.P.No.4316 of 2023		
W.P.No.4319 of 2023		
W.P.No.4320 of 2023		
W.P.No.4323 of 2023		
W.P.No.5073 of 2023		
W.P.No.5075 of 2023		

	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.2003 of 2023	Mr.Richardson Wilson	Dr.T.Seenivasan, Spl. Government Pleader for R1
W.P.No.2013 of 2023		
W.P.No.2018 of 2023		
W.P.No.2023 of 2023		
W.P.No.2027 of 2023		
W.P.No.2038 of 2023		
W.P.No.2349 of 2023		
W.P.No.2358 of 2023		
W.P.No.2361 of 2023		
W.P.No.2365 of 2023		
W.P.No.2378 of 2023		
W.P.No.2383 of 2023		
W.P.No.2646 of 2023		



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	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.2654 of 2023		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR2 & 3 & Mr.M.R.Gokul Krishnan
W.P.No.2660 of 2023		
W.P.No.2661 of 2023		
W.P.No.2666 of 2023		
W.P.No.2670 of 2023		

	Counsel for Petitioner(s)	Counsel for Respondent(s)
W.P.No.2949 of 2023	Mr.A.E.Ravichandran	Dr.T.Seenivasan, Spl. Government pleader for RR1 & 2
W.P.No.2953 of 2023		Mr.A.Selvendran, Spl. Government Pleader for R6
W.P.No.2956 of 2023		
W.P.No.3254 of 2023		Mr.J.Ravindran, Addl. Advocate General IX, Assisted by Mrs.Shanmugavalli Sekar, Standing Counsel for RR3 to 5 & Mr.M.R.Gokul Krishnan
W.P.No.3257 of 2023		
W.P.No.3259 of 2023		
W.P.No.3262 of 2023		
W.P.No.3944 of 2023		
W.P.No.3946 of 2023		
W.P.No.3948 of 2023		
W.P.No.3951 of 2023		

COMMON ORDER

V.LAKSHMINARAYANAN.J.,

These writ petitions challenge the orders passed by the Chairman, Tamil Nadu Pollution Control Board (TNPCB). The orders are more or less identical and hence, all the writ petitions are disposed of by this common



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order.

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2. The facts leading to the filing of the writ petitions are: The petitioners were involved in the manufacture of bricks. They were conducting their business in Coimbatore District. It is on record that none of the petitioners had obtained consent to establish or consent to operate their brick kilns under the relevant environmental statutes. Complaints were received against the illegal brick kilns being operated at Thadagam Valley. Proceedings were initiated before this court as well as before the National Green Tribunal (NGT), South Zone at Chennai. The proceedings were initiated in O.A.No.119 of 2021 by the NGT South Zone. Insofar as the writ petitions concerned before this court in W.P.No.27356 of 2019 and W.P.No.28475 of 2019, reliefs that were sought was for protection of Elephant Corridor in the District of Coimbatore and for closure of illegal brick kilns at Chinna Thadagam, Nanjundapuram, Veerapandi, Somayapalayam and Pannimadai Villages of Coimbatore District, respectively. A relief was also sought for the constitution of a committee to assess the damages.

3. By orders dated 06.01.2021 and 10.02.2021, the First Bench of this



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Court in W.P.Nos.23756 & 28475 of 2019 directed the appropriate authorities to take action against the brick kilns, which were operating illegally or without any licence. Originally, closure orders were passed by the Tahsildar concerned on 19.03.2021 along with the District Environmental Engineer, and the Assistant Director of Geology and Mining. This order dated 19.03.2021 was challenged before this Court in a batch of writ petitions in W.P.No.9606 of 2021, etc. This Court, by its order held that the proper authority is the District Collector of Coimbatore and therefore, set aside the orders passed by the aforesaid three authorities dated 19.03.2021. This court directed the District Collector, Coimbatore, to pass orders after hearing the affected parties. Pursuant thereto, the District Collector of Coimbatore had ordered closure of 185 illegally operating brick kilns.

4. On 13.06.2021, the District Collector, Coimbatore, directed the closure of the brick kilns. In the mean time, the NGT, South Zone, initiated a *suo motu* case in O.A.No.119 of 2021. The NGT constituted a joint committee comprising of the District Collector, a member from the Tamil



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Nadu State Environment Impact Assessment Authority, District

Environmental Engineer, TNPCB, a member of the Central Pollution Control Board (CPCB), and the Regional Director of Geology and Mining.

This committee was directed to personally inspect the areas and submit a report and a report was also submitted. Since action was initiated by the NGT (South Zone), W.P.No.28475 of 2019 was dismissed directing the parties to approach the NGT for assessment of damages. In turn, by order dated 13.05.2022, NGT (South Zone) directed the authorities to determine the damages that had been caused on account of 185 illegally run brick kilns. This order was passed on that very day, the Joint Committee filed a report before the NGT. Within a couple of months, the Chairman, TNPCB, issued notices in exercise of the powers delegated to him under Section 5 of the Environment (Protection) Act, 1986 calling upon the noticees to show cause why a damage of Rs.32,00,000/- must not be imposed on them. (This figure is more or less common in all the show cause notices). The period for which notices were issued was for 513 days.

5. Taking note of the fact that show cause notices have been issued



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under Section 5 of The Environment (Protection) Act, 1986, the NGT (South Zone), directed the authorities to pass orders on the basis of the show cause notices already issued. It directed them to afford an opportunity to the concerned persons before coming to a conclusion on the quantum of damages. This order was passed on 06.09.2022.

6. On the basis of this order, on 20.10.2022, the District Environmental Engineer, TNPCB, issued notices calling upon the brick kiln owners to appear before the Joint Chief Environmental Engineer, TNPCB, and submit their objections. The inquiries were conducted in November, 2022. On the basis of the show cause notices and the replies, orders have been passed confirming the show cause notices and imposing a penalty / environmental damage of Rs.32,00,000/- on each of the petitioners. Challenge before us is to these orders passed by the Chairman, TNPCB.

7. We heard Mr.S.Parthasarathy, learned Senior Counsel appearing on behalf of Mr.K.Govindarajan; Mr.N.Murali Kumaran, learned Senior Counsel appearing on behalf of McGan Law Firm; Mr.N.Sridhar, learned



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counsel appearing on behalf of Mr.R.Bharath Kumar;
Mr.A.E.Ravichandran, and Mr.Richardson Wilson, learned counsel
appearing for the respective petitioners. We also heard Mr.J.Ravindran,
learned Additional Advocate General for Mrs.Shanmugavalli Sekar,
Standing Counsel for TNPCB; Dr.T.Seenivasan, learned Special
Government Pleader for the State and Mr.A.Selvendran, learned Special
Government Pleader for District Administration.

8. Leading the arguments, Mr.N.Murali Kumaran, learned Senior
Counsel would submit that

(1) The Chairman, TNPCB, does not have the
jurisdiction to deal with the issue;

(2) Formula that had been laid down by the
Central Pollution Control Board (CPCB) is not
applicable to the case of the petitioners;

(3) The petitioners were not put on notice on the
methodology arrived at prior to the formula; and

(4) In the impugned order, there is no discussion



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about the reply submitted by the petitioners.

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9. He would further state that there is no power to levy penalty and that there are no rules framed for the purpose of assessing damages and therefore, the TNPCB has to approach the Civil Court for the purpose of recovering the damages from the brick kilns.

10. He would further add that there is no mechanism either under the Air or the Water Act for the purpose of imposition of penalty / damages / compensation. Therefore, according to him, the impugned order has to be quashed.

11. Mr.N.Sridhar, learned counsel for some of the writ petitioners, would submit as follows:

(1) There was no inspection conducted by the TNPCB prior to the fixation of the liability.

(2) There were no dates that were mentioned when the units were working.



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(3) No individual opportunity had been afforded.

(4) Finally, he would argue that CPCB formula utilized in the impugned order is inapplicable.

12. Mr.S.Parthasarathy, learned Senior Counsel would submit as follows:

(1) that there was no delegation of powers to the Chairman, TNPCB, relating to brick kilns industries as per Notification of the year 2001;

(2) the Expert Body as required by the CPCB had not been formed and therefore, the application of formula reeks of non application of mind; and

(3) the person who heard was the Chief Joint Environmental Engineer, but the orders were passed by the Chairman, TNPCB, thereby violating the principles of Administrative Law that "one who hears must decide".

13. Mr.A.E.Ravichandran, learned counsel would :-



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(1) reiterate the aforesaid submissions; and

(2) in addition, he would submit that no notice was given under the Air Act in 2019 and relating to the Water Act.;

(3) he would state that one cannot pick and choose the area for the purpose of assessing damages and would refer to paragraph 21 of the counter affidavit to substantiate the same; and

(4) he would state that the industries were closed on 19.03.2021 and therefore, no data is available for the purpose of imposing penalty.

14. Mr. Richardson Wilson, learned counsel would submit that

(1) no effective personal hearing was given to the affected persons;

(2) order is unreasoned and;

(3) the TNPCB should have stated in the impugned order that it had no jurisdiction even though



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the NGT (South Zone) had stated that TNPCB has to pass orders.

15. Rebutting these arguments, Mr.J.Ravindran, learned Additional Advocate General, would submit that

(1) all the industries were being run illegally without any licence;

(2) a person who comes to the court with unclean hands cannot claim equities and as all the petitioners were illegally running brick kilns, they are not entitled to any relief from the hands of this court;

(3) he would further submit that even if the provisions of the Environment (Protection) Act, 1986, Air Act and Water Act had been violated, the petitioners are not entitled to any benefit as they are violators and the court should not quash the orders as the process has not been followed. In that light, he relied upon a judgement of this court in W.P.(MD) No.22493 of 2022;



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(4) he would state that sealing of an industry is akin to penalty proceedings and therefore, since closure was pursuant to the order of this court, there is no requirement to quash the same.;

(5) he would further add that the petitioners have the benefit of alternative remedy before the NGT pointing out Section 5A of the Environment (Protection) Act, 1986;

(6) he would also say the petitioners have no legal right nor is their property being deprived and would strongly urge us to follow the judgement in **United Bank of India Vs. Satyawati Tondon and others** reported in **(2010) 8 SCC 110**;

(7) he would also point out the judgement of this court in W.P.No.27536 of 2019, in particular, paragraphs 6 to 8 and would state that this court had directed all the aspects should be dealt with only by the NGT and therefore, this court should not interfere with



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the orders passed by the TNPCB but, on the contrary directed the parties to approach the NGT;

(8) he would state that compensation has been levied due to environmental damage and it is as per the order of the High Court. He would state that if the units are acting illegally, the court has to apply the principle of “polluter pays “in order to uphold the “principle of sustainable development”; and

(9) he would state that the manner of assessment has been given as per the formula given by the CPCB which has categorised the industries and therefore, it does not require interference. He would further state that the date of issuance of show cause notice to the date of closure is the period on which assessment has been made.

16. On a question raised to him by us, as to whether report of the Joint Chief Environmental Engineer, TNPCB was given to the petitioners,



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he stated that it had not been given to the petitioners, but was submitted to the Chairman, TNPCB, to enable him to pass orders. He would also submit that though specifically the reply to the show cause notice issued by the petitioners had not been referred to in the reference portion of the impugned order, in the body of the order, it has been dealt with.

17. He would state that we have to hold that the order is in accordance with law and in the larger interest of environment, we must not interfere with the same.

18. We have carefully considered the submissions made on either side.

19. We have to record that 185 brick kiln industries had been running illegally without getting permission from the appropriate authorities. In fact, for the absence of mining permission under the relevant provisions of the Tamil Nadu Minor Mineral (Concession) Rules, penalty proceedings have been initiated and concluded. Against those orders, the brick kiln operators



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have preferred appeals before the Director of Mines and Geology at Chennai against the penalty proceedings initiated for illegal extraction of minerals and the same are pending. We are not concerned with those proceedings. However, we are recording it for the purpose of satisfying ourselves that the activities of the petitioners are not within the frame work of law.

20. We are not in agreement with the primary submission of the petitioners that one who hears must decide applies to this case. That view was laid down in the famous case of **Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308**. The difference between those proceedings and the present proceedings are the subject matter of interpretation. In that case, it was S.68-D of the Motor Vehicles Act which fell for consideration. Under that Act, the quasi judicial powers had been imposed on the statutory authority and the Section itself required '**giving an opportunity to a person of being heard in person**'. That was a statutory requirement and was in that light, the Supreme Court had held that the authority who has been conferred with the powers under



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the statute must strictly comply with the same and cannot dispense with the said requirement. That verdict cannot be understood as having laid down a proposition that whenever a quasi judicial or administrative power is conferred on any authority, the authority concerned must hear the parties by himself and he cannot act on a report prepared by his subordinates.

21. The idea of the petitioners seems to be to filibuster the entire proceedings and make the Chairman, TNPCB, to hear each and everyone of 185 violators. We are in agreement with the view of the Additional Advocate General that the Chairman, TNPCB, need not hear all the petitioners individually. There is an ocean of difference between giving an opportunity to a person of being heard in person and giving an opportunity to a person to be heard. The difference being in the case of the former, the affected must be issued with a notice and heard by the decision making authority himself. In the latter case, the authority concerned can delegate the power to a subordinate and ask him to conduct an inquiry and submit a report, on the basis of which he can act.



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22. We draw strength in this view from the judgements of Kerala High Court, Allahabad High Court and that of Madhya Pradesh High Court in **Raghava Menon v. Inspector General of Police, Kerala** reported in **AIR 1961 Ker 299**; **Triambak Pati Tripathi v. Board of High School and Intermediate Education, U.P. Allahabad** reported in **AIR 1973 All 1 (FB)**; and **Officers Association, Bhilai Steel Plant v. Steel Authority of India Limited** reported in **1983 M.P.L.J. 50**.

23. We would also fruitfully refer to the work of Professor Wade in the book *Administrative Law*, 11th edition, page 448 wherein he has opined as under:-

“Where the deciding authority is a minister or central government department, it must be assumed that Parliament intends the department to operate in its usual way, so that the minister's duties may be performed by subordinate officials. In other cases, the courts allow some relaxation of the normal rule which requires statutory powers to be exercised by the precise person or body on whom they are conferred and makes it impossible



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for them to be legally exercised by others, e.g. sub-committees." The Privy Council has held that a dairy board, in making zoning orders affecting milk producers, may appoint a person or persons to receive evidence and submissions from interested parties; and that if, before deciding to make an order, the board is fully informed of the evidence and submissions, there will be no breach of natural justice".

24. We can also usefully refer to the scholarly article written by V.S. Deshpande titled "The One Who Decides Must Hear" reported in 2 *J.I.L.I.* 423 (1960). The learned author has stated as follows:-

"While a truly judicial decision is rendered by a definite person who has heard the case, the authorship of the administrative decision even after a quasi-judicial hearing may not at times be traceable. The decision may be made by a Government or a department or an administrative agency and it may not be traced to any particular person. As distinct from the personal decision of the truly judicial type, the latter decision has sometimes been called an institutional decision.



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While it may not be always possible for the administrative decisions to be personal, the requirements of a fair hearing demand that the connection between the hearing decision should be as close as possible. The statutes conferring power on administrative authorities may vest the power of such hearing decision either in a definite person or in a body like the Government or an administrative agency. To illustrate these two types, let take two Indian statutes which restrict the right of property. They are (1) the Land Acquisition Act, 1894, and (2) the Requisitioning and Acquisition of Immovable Property Act, 1952. The inquiry and decision into the objections of interested persons under Section of the Land Acquisition Act and under Section 3 of the Requisitioning and Acquisition of Immovable property Act has to be by one definite person. On the other hand, the hearing and decision as whether a requisitioned property should be acquired by the Central Government is to be done under the proviso to Section 7(1) of the Requisitioning and Acquisition of Immovable Property Act by the Central Government and not by any one definite person.



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Government is an impersonal body and can function only through its officers. An authorised officer may, therefore, hear the objections and may take the decision in the name of the Government. If he is not authorised to take the decision he will submit the record of hearing with his proposals thereon to the higher authority for such decision.”

25. It is here the view of Lord Chancellor Haldane in *Local Government Board v. Alridge* reported in (1915) A.C. 120 becomes relevant. We extract the same for ready appreciation of the aforesaid proposition.

“The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other



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members of the Board should do everything personally would be to impair his efficiency. Unlike a judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff. When, therefore, the Board is directed to dispose of an appeal, that does not mean that any particular official of the Board is to dispose of it.”

26. This view of ours is also in line with that of the view taken by the Supreme Court in **Pradyat Kumar v. Chief Justice of Calcutta [AIR 1956 SC 285]** wherein it had been held that it is not necessary for the Chief Justice of High Court to himself hold an inquiry but, it is open to him to delegate his functions, unless a statute specifically, orders by necessary implication, directs that the authority to hold the inquiry. It was further observed that what cannot be delegated is the ultimate responsibility of the exercise of the power. Applying these principles to the facts of the case, under Section 5 of the Environment (Protection) Act, the power to give directions has been conferred by the Parliament on the Central Government and the Central Government has, in turn, delegated the power to pass orders on the Chairman of the respective State Pollution Control Boards.



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27. The show cause notices in the instant cases have been issued by the Chairman, TNPCB and the impugned orders have also been passed only by the Chairman, TNPCB. We are unable to accept the arguments of the petitioners that there is no delegation as per Notification in S.O.No.327(E) dated 10th April, 2001 to deal with the brick kiln industries. When it comes to environmental matters, power has to be read widely and not as in taxing or penal statute – in a strict manner. Under the aforesaid Notification issued on 10.04.2001, power conferred on the Central Government under Section 5 has been delegated to the Chairman of the TNPCB, with respect to the State of Tamil Nadu. The statute read with the notification empowers the Chairman, TNPCB, to issue directions to any industry or any local or other authority for violation of standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic wastes notified under The Environment (Protection) Act 1986. Brick kiln industry, in our view, would come within the scope of industries relating to hazardous chemical/ industrial solid waste. The reason being manufacture of bricks results in emission of toxic gases and



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production of solid waste. Therefore, we are satisfied that the Chairman, TNPCB, is possessed to have jurisdiction to issue the show cause notices as well as to pass the impugned orders in terms of Section 5 of the Environment (Protection) Act, 1986 r/w Notification vide S.O.327(E) dated 10.04.2001.

28. Apart from this, we have to point out that this court in W.P.No.27536 of 2019 had directed on 19.01.2023 as follows:-

6. It is the contention of the learned counsel Mr.SP. Chockalingam, that pursuant to the above order, the illegal mining activities have started again and bricks have been removed and transported to various other areas. It is relevant to note that the issue pertaining to the illegal mining is already seized by the Hon'ble National Green Tribunal in O.A.No.119 of 2021(SZ). After considering the seriousness of the issue, the Hon'ble National Green Tribunal has constituted a Joint Committee and directed submission of a report. The Joint Committee while filing their



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report has assessed the interim environmental compensation as Rs.376.74 Crores. The above issue is still pending before the National Green Tribunal.

7. In the meanwhile, the Pollution Control Board has also fixed the compensation at various levels depending upon the nature of the mining done by the individual operators. The Status Report filed by the District Collector, Coimbatore also indicates that the order passed by the Director of Geology and Mining is kept in abeyance as per the instructions of the Hon'ble National Green Tribunal. 8. Since, the Brick Klins have been operated for many years, the National Green Tribunal is already seized of the matter and constituted a Committee which has also arrived an interim environmental compensation, the matter has to be decided by the National Green Tribunal. We are of the view that insofar as the issue pertaining to illegal operation of the Brick Klins in Thadagam Valley and other places, the National Green Tribunal can look into the matter and take into consideration of the Report filed by the Joint Committee.”



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WEB COPY 29. Pursuant to directions of this court directing the NGT to fix the compensation, the NGT, had directed the TNPCB to assess the damages. This is clear from the order in O.A.No.119 of 2021 (South Zone) and O.A.No.135 of 2021 (South Zone) dated 06.09.2022. We are extracting the same for understanding the circumstances leading to the Chairman, TNPCB, passing the order:

“4. Be that as it may, once the reply is given to the show cause notices issued by the Pollution Control Board, the individual units are directed to appear before the Board and submit what all are their objections and the Pollution Control Board is directed to pass appropriate order.

5. This Tribunal has taken suo motu action against the brick kiln owners taking cognizance of the fact that there was no provision to regulate their activities and the unauthorized brick kilns



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have been popping up exploiting the Western Ghat region resulting in ecological damage.

6. Therefore, the proceedings were initiated by the Pollution Control Board as well as the Mining Authority. The Brick Kiln owners who are represented through their Association are directed to file their appropriate response in this regard.

7. If replies to the show-cause notices are received by Pollution Control Board, it is directed to complete the proceedings by conducting an inquiry after affording an opportunity of personal hearing to the individuals and then pass necessary orders within a period of six weeks.”

30. Apart from this, the brick kiln manufactures were represented before the NGT through Coimbatore District Brick Manufacturers' Association. By an order dated 13.05.2022, the said Association had been directed by the NGT to take up the responsibility of paying the same. If we



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were to accept the submissions of Mr.N.Murali Kumaran and Mr.Richardson Wilson, then, we would be indirectly setting aside the orders passed by this court as well as by the NGT when they have become final. We are not willing to fall prey to this impish design.

31. Moving on to the argument that the petitioners were not individually heard, we have gone through the records produced by the TNPCB. We find each of the units were called for inquiry, commencing from 26.10.2022 and concluding with 11.11.2022. This being the position, we are not inclined to accept the argument of Mr.Richardson Wilson and Mr.N.Sridhar that individual hearing was not given to the petitioners but, that they were heard as a group. It is here we have to point out that the court is empowered under Section 114 of the Evidence Act to presume the existence of any fact which it thinks likely to have happened, regarding the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Thus, we have to presume in exercise of Section 114 (e) of the Evidence Act that judicial and official acts have been regularly performed. In the light of the data



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produced by the TNPCB with respect to the hearing, we are satisfied that it was done in accordance with law.

32. The argument that the methodology that were adopted by the TNPCB had not been put on notice should also fail. The reason being, a perusal of the show cause notices show that the TNPCB had informed through its notices about the Central Pollution Control Board's methodology for assessing the environmental compensation and action plan to utilize the funds. This CPCB's methodology had been developed pursuant to the order of the Principal Bench of the NGT by its order dated 03.08.2018 in O.A.No.593 of 2017. Today's position of Environmental Law is that a polluter has to pay for the pollution that he/she has caused. We are not dealing with the case where the petitioners were carrying on their business in accordance with law. The petitioners were violating the law in its entire gamut running industries without licences, either from the State Mining authorities or from the Pollution Control authorities. We are extremely dissatisfied with the attitude of the State authorities in not taking an action when 185 brick kilns were openly violating the law. The public trust



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imposed in the authorities under the Mines and Geology Act and under the Pollution Control Laws seems to have been misplaced. If not for the proactive role played by this court and by the NGT, brick kilns would still be indulging in illegal mining and profiting at the cost of the environment.

33. We have to deal with the next point raised by Mr.S.Parthasarathy, learned Senior Counsel that the formula that has been applied by the TNPCB is erroneous. As already seen, pursuant to the order of the NGT's Principal Bench, New Delhi, in O.A.No.593 of 2017, CPCB had come forward with a methodology to assess and recover the compensation towards environmental damage.

34. Mr.S.Parthasarathy, learned Senior Counsel, took us through the report of the CPCB in-house committee on the methodology. He drew our attention to Guidelines 1.3.1. dealing with the cases that have to be considered for levying environmental compensation. They are as follows:-



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- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment – land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated / partially treated / untreated effluents to ground water.

35. The category under which the illegal brick kilns fall is, category (e). The formula applied by the TNPCB in the show cause notice as well as in the impugned order is extracted hereunder:-



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$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ?

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (?) for EC

S = Factor for scale of operation

LF = Location factor

However, a reference to paragraph 1.3.1. shows that this formula applies only for instances mentioned in categories (a), (b) and (c). With respect to the categories (d), (e) and (f), the CPCB had recommended that the environment compensation must fall under two heads. The first one providing immediate relief and the second one being long term measures such as remediation. It had stated that in all such cases falling under (d), (e) and (f), detailed investigations are required from expert institutions identified by the CPCB. After such identification, a comprehensive plan for remediation of environmental pollution must be prepared and executed under the supervision of a committee with representatives from the State Pollution Control Board, Central Pollution Control Board, and experts or



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institutions or organizations. It is unfortunate that while implementing the orders of this court and that of the NGT (South Zone), the TNPCB has applied a wrong formula to a right case.

36. This is a case which is crying out for remediation of environmental damages that have been caused by the illegal brick kiln industries. However, instead of following the formula laid down in 1.3.2 of guidelines, which applies to the facts of the case, the TNPCB had applied the formula 1.3.1. If not for being an environmental matter, we would have hauled up the authorities for this blatant non application of mind. We are not pursuing the course of action because it is not going to be of any use and the environment will suffer more. We are convinced with the explanation given by the learned Additional Advocate General that this is a bonafide exercise. The authority having the jurisdiction, i.e., the Chairman, TNPCB, ought to have constituted a committee, in terms of the guidelines found under 1.3.2 and should have dealt with the matter with all expedition as the matter required. Instead, he had directed the Joint Chief Environmental Engineer to deal with the issue. We are forced to interfere with the



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impugned orders on this ground.

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37. Furthermore, as pointed out by the counsels for the respective petitioners, the Chairman, TNPCB, has not dealt with the explanations given by the petitioners. He has not even referred to the replies given by the petitioners in the reference column of the order. Being he the blackest of polluter in the nation when the law requires particular act to be done in a particular way, before imposition of damages / environmental compensation and in no other way, it has to be done in that way.

38. In addition, the Supreme Court has developed the principles of natural justice to such an extent that it forms part of Article 14 of the Constitution of India. Duty to give reasons as held in **S.N.Mukherjee v. Union of India** reported in (1990) 4 SCC 594 is now a part of our constitutional galaxy. We do not find reasons in the impugned orders. Therefore, the orders of the Chairman, TNPCB have to be set aside on that ground also.



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39. Apart from these two, another disturbing factor in the instant cases is that a copy of the report of the Joint Environmental Engineer was not even given to the petitioners. It is not a case where each of the industries was started on the same day. The petitioners have, in fact, gone before the District Collector and had stated that they should not be visited with any penalty as required under Tamil Nadu Minor Minerals (Concession) Rules based on the Annual Brick Mineral Fees paid by them. By the impugned order, the assessment has been confined from the date of show cause notices till the date of closure of industries. It is the duty of the State to bring back the environment, at least to the best possible state, as close to the state which existed before the pollution happened. To fix an arbitrary rate of 513 days is only to discount the illegal activities indulged by the petitioner. This is *ex facie* arbitrary. When Annual Brick Mineral Fees have been paid by the writ petitioners, the environment damage should have been calculated from the date on which that fees had been started to be paid. The date of show cause notices cannot be the date on which the environmental damage commenced. There are other records in the form of sales tax, fuel bills for generators, electricity bills, water charges, etc, that could have been



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utilized by the TNPCB for the purpose of assessing the damages in terms of

Guidelines 1.3.2. The petitioners have not sought to argue on the number of days in which the Environment was damaged because it goes in their favour. In the matters of environment, the court cannot keep silent and go on as if it is a traditional adversarial litigation. It is our duty under Articles 14 and 21 of the Constitution of India to interfere. Accordingly, we hold that the number of days fixed by the TNPCB is arbitrary and we set aside the same.

40. We direct the respondents to fix the date of damage commencing from the date on which the business was commenced and conclude it with 13.06.2021, the date of which the District Collector, Coimbatore, had closed the units. We are in agreement with the submission of the learned Additional Advocate General that prior to the fixation of penalty, the petitioners need not be heard individually by the Chairman, TNPCB. However, imposition of penalty by the Chairman under the delegated powers under Section 5 of the Environment (Protection) Act, 1986 results in violation of Article 300 A of the Constitution. The comparison of the learned Additional Advocate General that sealing of an industry under the Water Act and Air Act which



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can also be applied for assessment of environmental penalty does not appeal to us. A penalty proceeding is penal in nature and no person can be condemned without hearing. An order passed without hearing the petitioners and without giving a copy of the report violates the principles of natural justice.

41. While rejecting the argument of the learned Senior Counsels for the respective petitioners that Chairman does not have jurisdiction, we find that there is a violation of principles of natural justice as the report of the Joint Chief Environmental Engineer had not been served on the petitioners. It is the settled position of law that prior to passing an adverse order, a person has to be given a reasonable opportunity. That position having been violated in the present case, we hold that the writ petitions are maintainable. Needless to point out, where there is a violation of principles of natural justice, the self imposed fetter of directing the parties to resort to alternative remedy need not be adhered to. We have found that there is violation of natural justice and if we were to remit the matter as it is, it will give an opportunity to the petitioners to argue the issue of application of



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wrong formula to them. Therefore, we intend to pass a comprehensive order with regard to application of right formula also. We are concerned with the remediation of the environment and therefore, though these matters relate to the proceedings of the year 2022 and 2023, we have taken up this batch of writ petitions for hearing as we do not want the petitioners to enjoy the benefit of interim order and thereby continue to enrich themselves with the illegally acquired wealth gained by running the brick kilns.

42. The plea of the learned Additional Advocate General that we should not interfere with the impugned orders as in the larger interest of environment does not appeal to us. We are happy to note that the District Collector, Coimbatore, had closed the units pursuant to the order of this court dated 13.06.2021 at least from that date, the damage to the environment has abated. If we were to accept the impugned order as it is, it would amount to slap on the wrist of the polluters, which we are not inclined to agree. The polluters must pay for the damages that they have caused to the environment. In this case, when admittedly, for several years on end, the activities have been carried out illegally, the amount of



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compensation fixed by the TNPCB amounts to no more than a slap on the wrist and does not seem to be a serious exercise. It is in this circumstances, we are constrained to interfere with the impugned orders.

43. In fine, we hold as follows:-

(1) In terms of the delegated power under Section 5 r/w 23 of the Environment (Protection) Act, 1986, the Chairman, Tamil Nadu Pollution Control Board, is entitled to levy damages / penalty / compensation.

(2) The Chairman, Tamil Nadu Pollution Control Board, prior to fixing damages, shall strictly follow the methodology given by the Central Pollution Control Board's In-house Committee for assessing environmental compensation and action plan in particular, as per Guidelines 1.3.2 .

(3) Copy of the Report of the Committee appointed by the Chairman, TNPCB, under Guidelines 1.3.2, shall be given to each of the units.

(4) The Chairman, Tamil Nadu Pollution Control Board need not give a personal hearing, however, the Committee will hear the petitioners herein individually prior to its assessment and receive their replies.

(5) The Chairman, Tamil Nadu Pollution Control Board shall pass a



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reasoned order on all the matters individually referring to the report as well as the objections, if any.

(6) The period of damage shall be from the date of commencement of the operation by the individual brick kiln which can be found out from the Annual Brick Fee paid by them or from such material as the Chairman / the Committee so decides and shall conclude with the date of closure passed by the District Collector, Coimbatore, i.e., 13.06.2021.

(7) The said exercise shall be concluded within a period of six months from the date of receipt of a copy of this order. Till the completion of the assessment by the Committee, the parties shall maintain status quo.

W.M.P.No.9202 of 2023 in W.P.No.1812 of 2023

44. This miscellaneous petition has been filed by the person who has initiated the proceedings before the NGT South Zone. The writ petitions challenge the assessment of damages and the manner in which such assessment has taken place. In such proceedings, the petitioner is neither necessary nor a proper party. However, we make it clear that if the petitioner has materials which would assist the Committee to form in terms of the



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CPCB guidelines, she is free to place the same before them. If we were to implead the petitioner it would only delay the proceedings further. As already stated, being the matter relating to environment, we are not inclined to brook any delay. Hence, this writ miscellaneous petition is liable to be dismissed giving liberty to the petitioner to approach the Committee in terms of CPCB Guidelines 1.3.2. With the above observation and direction, this miscellaneous petition is dismissed.

In the result, all these Writ Petitions are allowed with the directions as indicated above. For the reasons given above, W.M.P.No.9202 of 2023 in W.P.No.1812 of 2023 is dismissed. No costs. Consequently, the other connected miscellaneous petitions are closed.

(V.M.V.,J.) (V.L.N.,J.)
27..04..2023

Index : yes / no
Speaking order : yes / no
Neutral Citation : yes / no
kmk



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To

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1. The Principal Secretary to Government of
Tamil Nadu,
Industries Department,
Government Secretariat,
Fort St. George, Chennai 600 009.
2. The Secretary to The Government of Tamil Nadu,
Department of Environment & Forests,
Government Secretariat,
Fort St. George, Chennai 600 009.
3. The Chairperson, Tamil Nadu Pollution Control Board,
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4. The District Environmental Engineer,
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5. The Joint Chief Environmental Engineer,
Tamil Nadu Pollution Control Board\
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6. The District Collector,
Coimbatore District,
Coimbatore 641 018.



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V.M.VELUMANI.J.,
AND
V.LAKSHMINARAYANAN.J.,

kmk

Pre Delivery Common Order
in
W.P.No.34307 of 2022, etc., batch

Orders Pronounced on
27..04..2023