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WP.No.4917/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.4917/2023 & WMP.No.4930/2023

1.M/s.Vikram Processors
rep.by its Proprietor Mr.V.Hariram [deceased]
2.Tmt.Shiyamala
3.Mr.Srinivasa Vickram
4.Miss Narmadha
****P2 to P4 substituted as LR's of deceased
P1 vide order dated 29.02.2024 in
WMP.No.4188/2024 in WP.No.4917/2024**

... Petitioners

Vs.

1.The Tamil Nadu Pollution Control Board
rep.by its Chairman,
No.76, Anna Salai, Guindy
Chennai 600 032.

2.The District Environmental Engineer
Tamil Nadu Pollution Control Board
1/276 Maynnur Main Road
Siva Tower, Salem District 636 004.



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3.The District, Collector, Salem District.

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records of the 2nd respondent herein in his proceedings No.T4/TNPCB/Environmental Compensation/Defaulting Units/SLM/2019 dated 17.09.2019 and quash the same.

For Petitioners	: Mr.K.Raja
For RR 1 & 2	: Mrs.Shanmugavalli Sekar
	Standing counsel
For R3	: Mr.R.Kumaravel, AGP

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1)The present writ petition has been filed by the petitioners seeking issuance of a writ of certiorari to quash the order passed by the 2nd respondent dated 17.09.2019, directing the petitioner to pay a sum of Rs.23.60 lakhs towards recovery of interim environmental compensation.
- (2)Brief facts that are necessary for the disposal of this writ petition are as follows:
- (3)The petitioners are running a Bleaching Unit in Kondalampatti Village, Salem District. It is the case of the petitioner that the petitioners' Bleaching Unit is being for the past 32 years without any complaint. It is



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the specific case of the petitioners that the petitioners had established an effluent treatment plant which is a Zero Liquid Discharge Unit. However, one Mr.Manickam filed an Original Application in OA.No.51/2015 [SZ] before the National Green Tribunal, against Salem Municipality for discharging waste and sewage water into the river.

(4)It is the case of the petitioners that none of the Bleaching Unit is a party to the proceedings before the National Green Tribunal. However, the petitioner received the impugned order directing the petitioner to a sum of Rs.23.60 lakhs towards recovery of interim Environmental Compensation within fifteen days. Challenging the said order, the present writ petition is filed by the petitioners raising various grounds, particularly, on the ground that the impugned order is in violation of principles of natural justice.

(5)It is also stated that the impugned order does not even show any violation by the petitioners. Since the petitioners have a valid consent, it is stated that the petitioners cannot be saddled with a huge liability without even an inspection and verification of the devise, the petitioners have installed in its Unit to prevent any air and water pollution.



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(6) A counter affidavit has been filed on behalf of the respondents 1 and 2 referring to the following facts:

- The petitioner has obtained consent from the Pollution Control Board, both under Water and Air Act for certain industrial processing, particularly, bleaching.
- The petitioner has a valid permission to operate for the production and generation of sewage in respect of bleaching of hosiery fabric- 2.5 tonne per day and bleaching of cotton yarn-1.6 tonne per day.
- The petitioner has installed a sewage with capacity of 2.0 KLD apart from owning sufficient land.
- After referring to the infrastructures provided by the petitioner, the respondents have relied upon the order passed by the National Green Tribunal [PB], New Delhi, dated 04.02.2019, wherein the NGT has passed the order in the following lines:-

"10.Learned counsel for the TNPCB states that the situation has not fully improved and the pollution is still continuing. Thus, for the damage to the environment already caused compensation is required to be recovered from Salem Municipal Corporation as



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well as from polluting industries. Before finalizing this aspect, we consider it appropriate to direct a joint inspection to ascertain present status by a team comprising of representatives of Central Pollution Control Board [CPCB] and TNPCB. The Nodal Agency for compliance and coordination will be TNPCB."

- Again, an order was passed on 10.04.2019 in the said application in the following lines:

"9.Joint Committee is also directed to consider the question of quantum of compensation to be recovered and also persons responsible for the same and action taken by them to recover the same within a period of three months from today.

10.On the basis of the recommendation of the Joint Committee, it is for the Pollution Control Board to consider the further action to be taken against the violators and recover compensation if any required from them, after assessing the quantum of compensation payable by them. Pollution Control Board as well as the Joint Committee appointed by this Tribunal shall submit a detailed report as directed



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above regarding the factual and action taken within the three months from today by e-mail. The Salem Municipal Corporation is directed to submit the progress of the implementation of the action plan in this regard every three months by e-mail."

- It is further stated that as per the direction of the National Green Tribunal by orders dated 04.02.2019 and 10.04.2019, a Joint Committee comprising of representatives of the Central Pollution Board [CPCB] and the Tamil Nadu Pollution Control Board [TNPCB] was constituted. It is also stated that the Joint Committee inspected all the defaulting units in Salem area and submitted a report for imposing interim environmental compensation for 87 Units including the petitioners' Unit.

(7) From the counter affidavit, it is seen that the Joint Committee have adopted a method on their own and fixed the compensation at Rs.23.60 lakhs to be recovered from the petitioners' Unit for non-compliance by the Unit.

(8) It is admitted that the petitioners' Unit is closed in the year 2019 and the power supply of the Unit was also disconnected on 22.11.2019. The



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compensation now assessed and sought to be recovered from the petitioner is for carrying out dyeing activities by the petitioner Unit even after issuance of Closure direction and disconnection of power supply.

(9)The fact that the Unit was sealed by the District Administration on 03.08.2020 is admitted. The question is whether the impugned order fixing a huge liability of Rs.23.60 lakhs, can be sustained.

(10)The petitioners' Unit had obtained valid Consent and it was in operation for more than 32 years. By the impugned order, the TNPCB has directed the petitioners' Unit to pay a sum of Rs.23.60 lakhs towards recovery of environmental compensation as per the direction of NGT [PB], New Delhi.

(11)When there is an assessment of compensation for a liability fixed on individual for reasons, there must be proper notice to the said individual at least as to the basis of the assessment. In the present case, the impugned order does not even refer to any show cause notice. It is to be pointed out that the impugned order does not even a show the methodology or the procedure that was followed for fixing the compensation. What is the irregularity committed by the petitioner Unit,



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is not seen from the impugned order, even though an explanation is offered in the counter affidavit filed by the respondents 1 and 2.

(12)The law is settled that the respondent cannot improve by filing a counter affidavit when the impugned order does not satisfy a minimum requirement. When a person is saddled with a liability for causing environmental pollution, it should be based on some criteria. From the direction issued by the NGT, this Court finds that no specific methodology was recommended. When the assessment of damages or compensation should be based on the environmental damage that had been caused by the petitioners while running the industry, there should be minimum particulars on the basis on which the petitioners are directed to pay a substantial amount by way of compensation.

(13)This Court, in the absence of such particulars, is of the view that the impugned order is in violation of principles of natural justice. Therefore, on that short ground, the impugned order is liable to be set aside.

(14)Accordingly, the writ petition stands **allowed** and the impugned order dated 17.09.2019 is **set aside**. However, it is open to the respondents to make fresh assessment on the basis of the directions of NGT, after



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following a fair procedure and in accordance with law. It is needless to state that the petitioner should be given sufficient opportunity. It is also required from the respondents to give informations and details that are likely to be taken by the respondents to assess the quantum of compensation so that the petitioner will have a fair opportunity before suffering any order adverse to him. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
07.03.2024

AP

Internet : Yes

To

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