

Item No.1:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 09th day of November, 2023.

(By Chamber Circulation)

**Review Application No.11 of 2023 (SZ) in
Original Application No.262 of 2020 (SZ) &
I.A. Nos.57 & 59 of 2023 (SZ)**

IN THE MATTER OF

M/s. BRMSCO Garments Private Limited

Anchalpetty.P.O., Onakur Village,
Pampakkuda Grama Panchayat,
Ernakulam District – 686 667.
Represented by its Managing Director
T.K.Vijayan.

...Review Applicant/3rd Respondent

Versus

1. Onakkur Paristhithi Samarakshana Samithy

Reg. No. ER 155/08, Anchalpetty P.O.,
Pampakkuda, Ernakulam District – 686 667.
Represented by its President Abraham Paul,
Son of V.P. Poullose

...1st Respondent/Original Applicant

2. Kerala State Pollution Control Board

Represented by its Secretary
Pattom, Thiruvananthapuram-695 004.

...2nd Respondent/1st Respondent

3. The Deputy Superintendent of Police

Office of the Superintendent of Police
Puzhakkarakavu Roadd, Thottumkalpeedika,
Muvattupuzha, Kerala-686 661.

Present Address:

Puthencruz, Choondi Police Station,
Kochi – Madurai – Tondi Point Road,
Aikaranad South – 682 308.

...3rd Respondent/2nd Respondent

4. Union of India

Ministry of Environment, Forest and Climate Change
Rep. by its Secretary,
Indira Paryavaran Bhavan
Jorbagh Road, New Delhi - 110 003.

...4th Respondent/4th Respondent

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

1. The applicant in the above review application is the 3rd Respondent in Original Application No.262 of 2020 (SZ) which was disposed of on 26.09.2022.
2. The review applicant is engaged in the manufacture of Plastic Woven Fabrics and Flexible Packaging Materials in Onakkur Village, Muvattupuzha Taluk, Ernakulam District, State of Kerala.
3. The complaint of the applicant in the Original Application was that heavy machineries are being used for the manufacturing of the items which creates huge noise throughout the day and night, thereby the local people are affected on account of the same. In the review applicant's company viz., M/s. BRMSCO Garments Private Limited, there are more than 300 people working in an area of 50,000 Sq. ft. Admittedly, the unit was running 24/7.
4. After elaborate consideration and hearing the learned counsels for the Original Applicant and the Review Applicant, besides the reports of the regulatory bodies, the Original Application was allowed in part. In Para 46 (ii) of the Judgment dated 26.09.2022, this Tribunal had restricted the unit from operating from 10:00 p.m. to 06:00 a.m. applying the 'Precautionary Principle' and also considering the health of the people who are likely to be affected due to the possible sound pollution caused on account of the operation of the 3rd Respondent/Review Applicant's unit.
5. This portion of the order has triggered in filing of the above Review Application. The Review Applicant has stated that the imposition of restrictions on working hours would cripple the industry and that was not the report of the Kerala State Pollution Control Board. It is specifically stated that the report of the

Kerala SPCB did not contain any such suggestion for restriction on the working hours of the unit during the night time. Therefore, the said observation in the Judgment is uncalled for and is an error apparent on the face of the record which has to be reviewed.

- 6.** In this regard, it would be appropriate to advert to the report of the Kerala SPCB which was filed in the Original Application. A perusal of the report shows that originally, the Review Applicant's unit had exceeded the sound level prescribed for the residential area during the monitoring conducted on 23.01.2021 and several directions were issued to the unit. After the compliance of the directions issued for additional control measures, once again the monitoring test was conducted on 09.06.2021.
- 7.** On the given date, out of 97 No. looms, only 67 No. looms were functioning at the time of monitoring, as the production was limited due to a low supply of orders. The average sound level recorded at various time period was furnished. The average sound level obtained during the monitoring on 23.01.2021 would show that between 09:30 a.m. and 09:30 p.m., the sound level is 61.63 dB(A). On 09.06.2021, between 11:00 a.m. and 10:00 p.m., it was observed as 50.27 dB(A). On 23.01.2021, during the night time (between 09:30 p.m. and 07:00 a.m.), it was observed as 58.71 dB(A). On 09.06.2021, between 10:00 p.m. and 09:30 a.m., it was observed as 49.5 dB(A).
- 8.** Though the Kerala SPCB had reported that by providing additional control measures for abating noise pollution by the unit, there is a considerable reduction in noise level, had suggested that the time restriction should be insisted in the area where the unit in question is functioning and suggested that the industry should conform to the National Ambient Noise Standards with respect to the adjoining area. The Kerala SPCB also provided the National Ambient Noise Standards marked as Exhibit R1 (b). Exhibit R1 (b) has prescribed the Ambient Air Quality Standards in respect of noise with reference to the residential area at 55 dB (A) during the day time and 45 dB (A) during the night time.

- 9.** As per the report, the noise level during the night time, prior to and after the additional control measures were implemented is still over and above the standards prescribed. As the Kerala SPCB had stated that there is no restriction insisted for those units like the one in the instant case which generate excess noise while in operation, this Tribunal has given the above direction, which is now sought to be reviewed.
- 10.** The reports that are called for from the regulatory bodies are only to assess the ground truthing. It is always open to this Tribunal to accept/ reject/ modify/ clarify the same while considering the reports.
- 11.** In this case also, based on the report which suggested that the time restriction has to be issued for the unit that would generate noise, the order sought to be reviewed is passed. Therefore, it cannot be said to be an error apparent on the face of the record which warrants review.
- 12.** To be noted is that aggrieved by the order of this Tribunal dated 26.09.2022, the Review Applicant herein had preferred a Writ Petition [W.P. (C) No.31326 of 2022] before the Hon'ble High Court of Kerala. While disposing of the Writ Petition, the Hon'ble High Court of Kerala had observed that this Tribunal had found that there is a necessity for providing restrictions for the operation of the unit during the night hours and found that there is no error in the order of this Tribunal, restricting night time operation of the Review Applicant's industrial unit and dismissed the above-mentioned Writ Petition on 06.01.2023.
- 13.** Thereafter, the writ petitioner therein filed a Review Petition [R.P. No.98 of 2023]. The Hon'ble High Court of Kerala passed an order on 02.05.2023 in the said Review Petition and found that the judgment passed in the W.P. No.31326 of 2022 was passed on the footing that restrictions on operational timings insisted by the Kerala SPCB for the operation of the stone crusher units and quarries would apply to the Woven Bag Manufacturing unit of the review petitioner which is an error. The same was the view said to have been taken by the Tribunal also. Hence, permitted the

Review Petitioner therein to move this Tribunal by way of a review.

- 14.** Though the Kerala SPCB has not specifically stated that there is a time restriction for the industry in question, it has only stated that there should be time restrictions for the operation of the units that generate noise similar to the restriction and regulation prevailing for the operation of the stone crusher units and quarries.
- 15.** Admittedly and evidently, prior to the filing of the Original Application, the Review Applicant's unit was generating more noise than the prescribed level. Even after the additional control measures were implemented, the unit was found to be producing more noise than the prescribed level. However, it was considerably reduced after the control measures were implemented. Therefore, the Tribunal had passed an order for restricting the operation of the unit in the night hours.
- 16.** Hence, there is no error apparent on the face of the record and the review application lacks merit. **In the result, the Review Application [R.A. No.11 of 2023 (SZ)] is dismissed.**
- 17.** In view of the above-referred Review Petition [R.P. No.98 of 2023] and Writ Petition [W.P. (C) No.31326 of 2022] before the Hon'ble High Court of Kerala, the time taken in the prosecution of the same was excluded. Therefore, **I.A. No.59 of 2023 (SZ)** for condoning the delay is closed as not necessary and the **I.A. No.57 of 2023 (SZ)** to hear the Review Application in the Open Court is rejected.

Sd/-
Smt. Justice Pushpa Sathyanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Internet – Yes/No
All India NGT Reporter – Yes/No

**R.A. No.11/2023 (SZ) in
O.A. No.262/2020 (SZ) &
I.A. Nos.57 & 59/2023 (SZ)
09th November, 2023. Mn.**