

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No. 03 of 2023 (SZ)
(Through Video Conference)

IN THE MATTER OF

Angala Parameswari Blue Metals,

Proprietor,
Mr. P. Subramani,
S/o Perumal,
Kamandoddi Village,
Hosur Taluk,
Krishnagiri District,

...Appellant(s)

Versus

1. The Chairman,

Tamil Nadu Pollution Control Board,
No. 76 Anna Salai,
Guindy, Chennai- 600 032.

2. The District Environmental Engineer,

Tamil Nadu Pollution Control Board,
Plot No. 140^o, SIPCOT Industrial Complex,
Hosur- 635126.

3. The Sperintending Engineer,

Krishnagiri,
TANGEDCO

4. The Assistant Engineer,

O&M, Schoolagiri,
TANGEDCO.

5. Kuthavakkam Realtors Private Limited,

Rep by its Authorised Signatory,
Mr. S. Narasimhan,
Poly Hose Towers,
5th Floor, SPIC Annexe #88,
Mount Road, Gindy,
Chennai- 600 032.

6. Muniraj,

S/o Duraisamy,
Kanalatti Panchayat,
Shoolagiri Taluk,
Krishnagiri District.

...Respondent(s)

For Appellant(s):

Mr. K.S. Viswanathan, Sr. Adv along with Mr.
G. M. Ananthakumar.

For Respondent(s): Mr. S. Sai Sathya Jith for R1 and R2.
Mrs. Dhanalakshmi for Mr. S.T. Raja For R3 and R4.
Mr. Srinath Sridevan, Sr.Adv along with Ms. Aishwaraya S Nathan for R5.
Mr. T. Mohan Along with Mr. M.S. Seshadri for R6.

Judgment Reserved on: 25th April, 2023.

Judgment Pronounced on: 20th July, 2023.

CORAM:

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

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The appeal is directed against the order of the Appellate Authority, Tamil Nadu Pollution Control Board against the common order passed in Appeal Nos. 74 and 75 of 2022.
2. The appellant is a stone crushing industry operating at Sy. No. 1236/2 Kamandoddi Village, Soolagiri Taluk, Krishnagiri District in an extent of 5.77 acres. The said unit was originally run in the name of M/s. Sri Balaji Blue Metals since 2003 and was running with valid consent till 2005 which was purchased by the appellant herein on 16.12.2005 and renamed it as M/s. Angalaparamweswari Blue Metals. The consent under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 were also renewed in the name of the appellant on 30.05.2007 and thereafter the consent was renewed periodically till 2016. The latest renewal was valid up to 31.03.2022.

3. The appellant also has quarry lease which is valid till 20.3.2021 and the SEIAA has issued the Environmental Clearance on 18.10.2021. While so one Kthavakkam Realtors Private Ltd., who is the 5th respondent, has issued notice to the DTCP authorities not to issue any permission to the appellant. Based on the complaints of dust pollution, the Pollution Control Board had not passed orders for renewal of consent. Hence the appellant had moved the Hon'ble High Court in W.P. No. 9177 of 2022 seeking a direction to the Board to consider their application on merits. Thereafter, the renewal application of the appellant was returned calling upon the appellant to produce authenticated documents regarding the habitation in and around the site.

4. Even before the site application was processed, the Tamil Nadu Pollution Control Board, who is the 1st respondent, had issued closure order and disconnection of power supply under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 on 22.08.2022 against the appellant stating that there are 25 numbers of residents in Sy. No. 8, Kaveri Nagar, Addakurikki revenue village and in Sy. No. 22/2, Thinnur Grama Natham having 26 residences which exists within 500m radial distance. Secondly, as per the revenue records, the above inhabitations/Gramanatham exists since 11.01.1988.

5. Further, upon inspection the Pollution Control Board has found that:

- (i) The unit was under operation without valid renewed consent to operate of the Board.

- (ii) The wind net provided around the periphery of the unit premises were in a damage condition.
- (iii) The APC measures provided to the crusher machineries were found partially in a dismantled condition.
- (iv) The unit was not having water sprinkling facility to suppress the dust emission from the premises.
- (v) No green belt was developed inside and around the periphery.

6. In view of the above shortfalls the appellant unit was directed to be closed down and disconnection of power supply was issued by the 1st respondent. Similarly, it appears the Board passed the order under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 directing the closure of the unit and disconnection of the power supply.

7. Aggrieved by the said orders, the appellant had invoked the jurisdiction of the Appellate Authority and filed the appeal nos. 74 and 75 of 2022 which were disposed of on 08.02.2023. Aggrieved by the common judgement, the appeal is preferred by the appellant only against the order under the Air (Prevention and Control of Pollution) Act, 1981, though he ought to have filed two independent appeals. However, the Learned Counsel appearing for the appellant had stated that he has filed a writ petition before the Hon'ble High Court but did not furnish either the SR number or the writ petition number.

8. In the appeal, the Learned Counsel submitted that the unit was originally started in the year 2003 by one M/s Balaji Blue Metals,

who had obtained the valid consent from the Pollution Control Board in the year 2007. Thereafter, the unit was purchased in the name of the appellant and it was expanded further in the year 2018 for which also the consent was granted by the Pollution Control Board. Thus, the unit has been functioning for more than 17 years.

9. The contention of the appellant is that every time consent is either renewed or granted it is only done after inspection by the Board. So far the Board has never objected to the siting criteria. At the time when the unit commenced its business in the year 2003 and thereafter when the consent was renewed periodically including the expansion there were hardly any houses or habitation in the nearby vicinity and that is the reason why the crusher unit was permitted to operate. It was only after the 5th respondent a realtor who has an intention to commercially exploit the area wanted to eliminate the appellant from the locality made a complaint the trouble started for the appellant. In fact the appellant also has a valid Environmental Clearance for quarry operations which is closer to the crusher unit which is more than 500 meters away from the residential locality. So on that grounds the Appellate Authority should not have decided against the appellant which is erroneous according to the appellant.

10. The 5th respondent, who is Kuthavakkam Realtor Private Limit, at whose instance a complaint was issued and resulted in the present proceedings, had filed a counter. To be noted is that though the dispute is between the Pollution Control Board and the appellant, the 5th respondent had filed an intervening petition

before the Appellate Authority and was made a party to the proceedings. Hence as respondent no. 5, intervenor, had filed the counter. According to the 5th respondent, the villages Kamandoddi and Addaguriki are habituated for long which would be evident from the 'A' Register which shows the survey number 22/2 as Natham which is abutting the Sy. No. 1236/2 of Kamandoddi Village where the dispute crusher unit is operating.

11. The 5th respondent also admitted that the appellant had established a quarrying unit in order to quarry stone for his crusher unit. When the appellant applied for renewal of the consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, the Pollution Control Board sought for a report from the Tahsildar. The report from the Tahsildar revealed various violations including the non-development of the green belt as a protective measure. Hence, the Pollution Control Board is said to have issued the closure order and the direction for stoppage of power supply to the unit on 22.08.2022 under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. The appeals preferred against the same were also dismissed by the Appellate Authority, Tamil Nadu Pollution Control Board, which order is now under challenge.

12. The intervening 5th respondent raised the ground of maintainability contending that when the order impugned is a composite order passed under both the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, the appellant ought to have filed the two

appeals. Since he has filed only one appeal challenging the order passed only under the Air (Prevention and Control of Pollution) Act, 1971, it was argued that it would operate as *res judicata*, as the findings in the common order is deemed to have been not challenged by filing two appeals. The Learned Counsel also pointed out that if the quarry or crusher unit is within 300 m of the inhabitant area, the Environmental Clearance cannot be granted.

13. Heard the Learned Counsel for the appellant, Pollution Control Board and also the 5th and 6th respondent.

14. Even before the arguments were commenced, the Learned Counsel appearing for the private respondents raised the question of maintainability of the appeal. As the order of the Appellate Authority is a composite order passed both under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, the appellant ought to have preferred two appeals. He has preferred only one appeal against the notice and appeal is under the Air (Prevention and Control of Pollution) Act, 1981. Though, the Learned Counsel appearing for the appellant would submit that against the other appeal no. 74 of 2022 which is under the Water (Prevention and Control of Pollution) Act, 1974 there is a challenge before the Hon'ble High Court but neither the SR number nor the writ petition number were produced.

15. The notice of closure and disconnection of the power supply is passed by the Pollution Control Board under Section 31(A) the Air (Prevention and Control of Pollution) Act, 1981 and Section 33(A)

of the Water (Prevention and Control of Pollution) Act, 1974. Both the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 are independent enactments which empower the Pollution Control Board to take action against the erring industrial units.

16. Unless the appellant comes out clear from both the orders passed by the Pollution Control Board it may not be able to run the unit, therefore, the argument that the appeal preferred against only order passed under the Air act is not maintainable and does not impede the hearing of this appeal though may lead to a conflict of decision.

17. The appellant had valid consent as per the last renewal order till 31.03.2022. Therefore, it had applied for renewal of consent well before the expiry of the said date i.e. on 28.12.2021. Since no orders were passed by the Board, the appellant had filed W.P. No. 9177 of 2022 before the Hon'ble High Court of Madras seeking a mandamus directing the Pollution Control Board to consider their renewal application for grant of consent for their crushing unit in Sy. No. 1236/2 Kamandoddi Village. Before the Hon'ble High Court, the Board had submitted that the unit was surrounded by residences, gramanatham and other buildings through Government schemes within a radius of 300m from the crusher unit. Therefore, the same being violative of B.P No. 4 of the Board, the renewal was not granted and show-cause notice was issued to the unit on 22.11.2021 calling for explanation for the violations stated therein.

18. A detailed reply was also given by the appellant, herein, and also filed the application for renewal of the consent. The Board also has directed the unit to furnish the authenticated documents to show the shortest distance of the nearby approved residential habitation, Government Poromboke, Government building, national or state highway, educational institution, temples and other eco-sensitive areas etc., through a competent authority like National Remote Sensing Agency which would enable the Board to expedite the process and pass appropriate orders.

19. The said communication was received by the appellant when the writ petition was pending therefore, the Hon'ble High Court had directed the appellant to send a reply as had been required by the Board within two weeks from the date of receipt of the said communication after which the Board would consider the same on merits and pass appropriate orders in accordance with law.

20. Whether the appellant had filed the documents as required by the Pollution Control Board by obtaining the authenticated document from the competent authority i.e. National Remote Sensing Agency, Anna University, the answer is NO. The Learned Counsel for the appellant admitting the same argued that the letter from the Tahsildar dated 17.01.2006 clearly state that there are no Government Village, gramamatham, residences, school or highways within the distance of 500 m and that the entire area has only quarries and crushers.

21. Even the 6th respondent, who claims to be residing in the said area for more than 40 years, had never raised any objection all

these years about the siting of the crusher unit. Even, when the appellant unit was given consent by the Pollution Control Board in the year 2018 neither the 5th respondent nor the 6th respondent had raised any objection.

22. The National Green Tribunal Act, 2010 enables any person who is aggrieved to move the Tribunal. However, the adjudication of dispute under Section 14 shall be entertained by the Tribunal unless it is made within 06 months from the date on which the cause of action for such dispute first arose.

23. In his affidavit the 6th respondent has specifically stated that they have been living in the Door No. 543 Dinnur Village for more than 40 years and had never raised any objection for the captive quarry or the crushing unit all these years but impleaded himself as internevor only before the Appellate Authority for the first time.

24. Similarly, even the 5th respondent though is a realtor has not mentioned as to from when he has been residing in the said area and when he first raised his objection. He only states that there are several houses located in the area. Learned Appellate Authority had relied on the 'A' Register produced by the intervenor to show that SY. No. 22/2 in Thinnur Gramma natham measuring an extent of 0.33.0 acres which was issued on 1988 shows that there are house sites in the village within 500 m. The allotment order issued by the Tahsildar in the year 1988 itself shows that there were houses even in the year 1988.

25. As there has been various versions about the existence of houses, whether approved or non-approved and also the existence of the Gramanatham, the official respondents directed the appellant to obtain the certificate from the National Remote Sensing Agency. As the satellite images can go back in time to find out whether the habitations were there from the year 1988 and the position as of now. The said certificate was required to be produced by the appellant for the grant of consent order. Besides the certificate from the Tahsildar obtained in the year 2006, the appellant had not produced any other relevant document to show that the site of the crusher unit is within the specified distance.

26. Even presuming for a moment that the respondent nos. 5 and 6 are not before this Tribunal, the Pollution Control Board has sought for particulars for considering the application for renewal of the consent. The Pollution Control Board had earlier issued the consent and thereafter renewal and also for expansion in the year 2005, 2007 and 2018. In the Board Proceedings MS. No. 4 dated 02.07.2004 which provides for norms for the location of stone crushing industries. The criteria for stone crushing units are prescribed. As per the said B.P No. 4 existing stone crushing units are those which have valid licenses on the said date of Hon'ble Supreme Court order, namely, 10.05.1999. The said question does not arise here because admittedly the appellant unit was started by the erstwhile owner only in the year 2003. The clause 2 prescribes the criteria for new/proposed stone crushing units as follows:

Clause 2.1: No new/proposed stone crushing should be located within 500m from any national highways, state highways or inhabitant sites or places of public and religious importance.

Note- "inhabitant site" shall mean a village site or town site or a house site as referred to in the revenue records or a house site or a layout approved by the local body or Town or Country or Metropolitan Authority where the said body or authority is created under a statute and empower to approve such an area as a house site or a layout area (as desired in Rule 35 of the Tamil Nadu Minor and Mineral Concession Rule, 1959)

2.2- The minimum distance between new/proposed stone crusher should be 01km to avoid dust pollution influence of one over the other.

27. The Learned Counsel appearing for the appellant vehemently contended that the above said Board Proceedings does not refer to certificate to be obtained from the National Remote Sensing Agency, Anna University. Though, it is not specifically mentioned in the Board Proceedings that Pollution Control Board can ask for certificate from the National Remote Sensing Agency, Anna University. It is asked for only to prove the contrary of what was contended by the other respondents and also to ensure that the unit is not located in an area which would be risky for the residents.

28. Besides in the writ petition filed by the appellant, it was stated before the Hon'ble High Court that the appellant, herein, was required to obtain the certificate from the National Remote Sensing Agency, Anna University to consider the application for further process. A direction was given by the Hon'ble High Court to produce the required certificates before the authority after which the Pollution Control Board would consider the application for renewal on merits. If there was any difficulty for the appellant to obtain the said certificate from the National Remote Sensing Agency, it should have stated so even before the Hon'ble High Court. Having accepted the order passed by the Hon'ble High

Court, the appellant cannot go back on its stand that the production of the certificate from the National Remote Sensing Agency, Anna University is not mandatory and that appellant cannot be compelled to reproduce the same.

29. At this juncture, it would be relevant to advert to the Para-30 of the order of the Appellate Authority wherein there is a specific finding that the allotment order issued by Tahsildar, Hosur dated 13.08.1988 proves that there existed houses in the year 1988 itself. Therefore, the certificate of the Tahsildar produced by the appellant is held to be false. The Pollution Control Board had not rejected the application for renewal of consent but has only returned the application stating that additional details requested were not furnished as there were complaints received from the public regarding the violation of the siting guidelines it becomes necessary to get the certificate from the competent authority like National Remote Sensing Agency, Anna University to consider the application further.

30. The appellant has asked for a renewal and made an application. When the competent authority is asking for the documents to be produced for considering the same, it is the duty of the appellant to produce it unless it is impossible to produce the same. In this case, no doubt the appellant enjoyed privilege of having consent throughout but when there were objections, it would be appropriate for the appellant to come out of the objections by producing the required documents.

31. The Appellate Authority also had found that the documents produced by the appellant were not sufficient in view of the complaints received and the only way to resolve the same is to get the satellite images. Therefore, we also do not see any error in the finding of the Appellate Authority. It is also not disputed that the appellant has a mining lease for quarrying the stone and captive quarry for his crusher unit. Hence, it becomes all the more relevant that the appellant satisfy the authority before obtaining the consent.

32. In the above circumstances, we see no error in the order of the Appellate Authority and the same is confirmed. However, we only direct that while considering the application for renewal of consent the Pollution Control Board may consider the aspect that the appellant has been quarrying for more than a decade and make note of the subsequent developments and impose any other additional conditions for the operation in the event the same is granted.

33. In view of the above, the Appeal No. 03 of 2023 is dismissed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

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

Appeal No.03/2023(SZ)
20th July, 2023. (AM)

**Before the National Green
Tribunal
Southern Zone (Chennai)**

Appeal No. 03 of 2023

Angala Parameswari Blue
Metals,

Vs.

The Chairman, TNPCB and Ors.



Appeal No. 03/2023(SZ)
20th July, 2023. (AM)