BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.166 of 2017 (SZ)

In the matter of

M/s.Narmathaa Textiles Limited,
Rep. by its Chairman Mr.K.Rajendran,
No.1, Fifth Street,
Dr.Radhakrishnan Salai,
Chennai 600004

.. Applicant

Vs.

1. Tamil Nadu Pollution Control Board,
Rep. by its Chairman,
Anna Salai, Guindy,
Chennai 600032

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
1st Floor, D.V.Complex,
No.155, Nehru Street,
Erode 638 001

.. Respondents

Counsel appearing for the applicant

M/s.K.Ramu

Counsel appearing for the Respondents

Mrs.Rita Chandrasekar

O R D E R

Present

Hon'ble Shri Justice Dr. P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

- -

24th October, 2017

- -

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The applicant is engaged in the business of bleaching and printing of fabrics from the year 1991 and is said to have obtained 'consent' originally for bleaching and printing of fabrics for a quantity of 4,500 mts per month and discharge of effluent of 60 KLD. There appears to be a Public Interest Litigation filed in the High Court of Madras in W.P.No.30153 of 2003 for a direction against the Tamil Nadu Pollution Control Board (Board) to take action against the said company for causing pollution. The Hon'ble High Court of Madras in the order dated 4.7.2007 has imposed a fine at the rate of 6 paise, 8 paise and 10 paise for those industries which have not complied with the earlier direction. It is stated that the unit has established RO Plant with RMS as early as in 2006 for the effluent discharge of 500 KLD and it has applied for enhancing the capacity from 60 KLD to 500 KLD with Zero Liquid Discharge against the 'Consent to Establish' order dated 19.2.1996. Even though various orders have been passed, it is an admitted fact that ever since the date of starting of the business, the quantity of the effluent discharged by the applicant continues to be 60 KLD and it had never been increased at any point of time.

2.Based on the direction of the High Court as stated above, a fine of Rs.30,60,000 at the rate of 6 paise per litre of effluent discharged from 4.7.2007 to 5.11.2007 appears to have been imposed on the applicant and admittedly the applicant has paid only Rs.10,00,000 and the remaining amount is yet to be paid and the applicant has undertaken to pay the penalty amount in instalments.

3. There appears to have been some prolonged litigation for recovery of the loan amount from the applicant. The Union Bank of India having initiated proceedings under SARFAESI Act, ultimately, as against the loan

amount of Rs.67,50,82,257 a settlement has been reached for the payment of Rs.39,87,00,000 as full quit of the entire claim of the bank and it appears that on payment of the said amount the matter which was pending before the Debt Recovery Tribunal has been dismissed as “settled out of court”. From the year 2007 till 2016 the unit appears to have been under closure.

4. After settlement of the amount under SARFAESI Act, it appears that the applicant has made an application to the Board for the renewal of ‘consent’ by paying renewal fee of Rs.2,52,438. On receipt of the renewal application, the Board has passed an order directing that the penalty amount is yet to be paid and that apart ‘consent’ fee for the period from 2015 – 2016 amounting to Rs.25,79,442 is to be paid and unless the said amount is paid the application for renewal of ‘consent’ will not be considered. It is as against the said order, the present application is filed on the ground that from the year 2006 onwards the applicant has not been carrying on his activity and intending to restart the unit in the year 2016 when renewal application was filed, the Board should have taken a pragmatic view in calculating the ‘consent’ fee by excluding the period when the unit was not actually functioning and it is only on that basis the applicant has in fact paid renewal of ‘consent’ fee of Rs.2,52,438.

5. The respondent Board in its reply while admitting the fact that the generation of trade effluents of the applicant unit continue to be 60 KLD till the date of closure of the unit which was admittedly in the year 2007 and that the present application for renewal was filed on 26.12.2016, it is however stated by the Board that apart from the payment of balance amount of penalty of Rs.20,60,000, as per the Rules governing the Board, when a renewal application is filed during the pendency period the Board

has to charge ''consent" fee including the period when the unit is not under operation. It is based on that, the 'consent' fee of Rs.25,79,442 has been charged. The remitting of Rs.25,79,442 as renewal fee for the year 2016 – 2017 is admitted. It is the case of the Board that the 'consent' fee has been arrived at based on G.O.Ms.No.97 Environment and Forest (EC-1) Department, dated 17.8.2009 and G.O.Ms.No.71 Environment and Forest (EC – 1) Department dated 26.5.2010 which contemplate the 'consent' fee to be calculated on the basis of Gross Fixed Asset (GFA) without any depreciation. The case of the Board is that in the absence of enabling provision under the G.O granting exemption from fixing the 'consent' fee during the time when the unit was not in operation, it is not possible for the Board to give exemption.

6. Mrs. Rita Chandrasekar, learned counsel for the Board also would rely upon the said G.Os and submitted that in the absence of enabling provision, the Board cannot take unilateral decision.

7. On the other hand, Mr. Ramu, learned counsel appearing for the applicant would submit that when the facts are admitted that the application for renewal was pending and admittedly from 2007 onwards the unit has been closed, it is unfair on the part of the Board to continue to charge 'consent' fee on the basis of GFA. He has also submitted on the factual matrix of this case wherein the unit was under closure because of the financial crisis due to the SARFAESI proceedings and ultimately by charging such heavy amount as 'consent' fee a large number of employees will be affected.

8. After hearing the learned counsel appearing for the parties and on the admitted factual matrix which we have referred to above, we are of the

considered view that in the absence of any enabling provision on the part of the Board from charging 'consent' fee during the period when the unit was not in operation, pragmatic view must have been taken by the Board. Be that as it may, on the factual matrix of the case, we are of the view that the Board must be directed to take appropriate decision by excluding the period during which the applicant unit was not functioning for the purpose of imposing 'consent' fee. However, we make it very clear that the liability of the applicant in payment of penalty can never be dispensed with either by the Board or any other person.

9. In such view of the matter, the application stands allowed with a direction to the Board to pass appropriate orders taking into consideration the above said finding and such orders shall be passed expeditiously within a period of 10 days from today. The above said finding is given only on the peculiar facts and circumstances of this case and the same should not be a precedent in respect of the other units. If any request is made by the applicant for the payment of penalty by instalments, it is open to the Board to consider the same on merits.

The application stands disposed. No order as to costs.

Justice Dr.P.Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member

सत्यमेव जयते
NATIONAL GREEN TRIBUNAL, NEW DELHI
NGT