

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

**Application No. 16 of 2012 (SZ) (THC)
(W.P.No. 19006 of 2012, High Court of Andhra Pradesh)**

In the matter of:

1. Andhra Pradesh Pollution Control Board
rep. by its Member Secretary
Paryavaran Bahavan
A-3, Industrial Estate
Opposite to Police Station
Sanath Nagar, Hyderabad – 500 018.
2. The Joint Chief Environmental Engineer
A.P.Pollution Control Board
Zonal Office, 25-35/11, Tulasireddy Comple
2nd Floor, Opp. to Mandal Office
R.C. Puram, Medak District- 502 032 .. Applicants

-versus-

1. M/s. Visaka Industries Ltd.,
Yelumula Village
R.C. Puram Mandal, Medak District
rep. by its President- Corporate and
Company Secretary, Mr. K.V. Soorinarayanan.
2. The State Government of Andhra Pradesh
EFS & T Department
A.P. Secretariat, Hyderabad
rep. by its Secretary. .. Respondents

Counsel appearing for the applicants: Shri T. Sai Krishnan, Advocate

Counsel appearing for the respondents: Shrimathi Dakshyanai Reddy, Advocate for
respondent No. 1

(Respondent No. 2 given up in the Writ Petition)

JUDGMENT

PRESENT :

**Hon'ble Mr. Justice M. Chockalingam,
Judicial Member**

**Hon'ble Prof. Dr. R. Nagendran
Expert Member**

Date : 26th November 2013

**Hon'ble Mr. Justice M. Chockalingam,
Judicial Member**

In pursuance of an order of transfer of the W.P.No. 19006 of 2012 made by the Hon'ble High Court of Andhra Pradesh, this application was taken on file.

2. This application challenges an order of the Appellate Authority under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 of the State of Andhra Pradesh (for short 'Appellate Authority') made in Appeal No. 6 of 2010 filed by respondent No. 1 under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and section 31 of Air (Prevention and Control of Pollution) Act, 1981 whereby an order of the Andhra Pradesh Pollution Control Board (for short 'Board') the 1st Applicant herein to stop all activities in the premises of first respondent/industry by 31.07.2011 and shift to an alternate place, was set aside.

3. The brief facts of appeal grounds can be stated thus:

M/s. Visakha Industries Limited, the first respondent in this appeal is an Asbestos Cement Product Manufacturing Unit established in the year 1985 in

Yelumala Village, R.C. Puram Mandal, Medak District, Andhra Pradesh. The industry is located within 10 km radius of Osman Sagar and Himayat Sagar lakes (herein after called 'the lakes'). The first respondent's industry is a Red Category industry as per the classification in the Notification dated 20.12.1999 issued by the Ministry of Environment and Forests (for short 'MoEF') and the said industry is also recognised in the list of polluting industry as per G.O.Ms. No. 2, Environment, Science and Technology (Environment) Department dated 23.01.1995 of the Government of Andhra Pradesh.

4. In view of the Government policy to shift industries located within 10 km radius of the lakes, directions were issued by the Constitutional Court to protect the same in implementation of the orders of the Hon'ble Apex Court and a Government orders was issued vide G.O. Ms. No. 111, Municipal Administration and Urban Development Department dated 08.03.1996. As a consequence to the decision of the Apex Court and other courts, and with reference to the Government order dated 08.03.1996 various industries located within 10 km radius of the said lakes were identified and orders were passed for their relocation. The Government of Andhra Pradesh had also directed the Andhra Pradesh Industrial Infrastructure Corporation to allot lands to the industries to enable them to shift and relocate the industries.

5. The 1st respondent/industry was being reviewed for its performance periodically and in the meeting held on 18.11.2010 of the Task Force Committee, the performance of the 1st respondent/s industry was again reviewed and directions were issued to the 1st respondent/industry to stop all activities in the present premises by 31.07.2011 and shift to the alternate site provided by the Andhra Pradesh Industrial Infrastructure Corporation or any other place and to furnish a bank guarantee for Rs. 10,00, 000/- (Rupees ten lakh) only. The 1st respondent/industry approached the Appellate Authority in Appeal No. 6 of 2011 and the Appellate Authority passed an order on 25.03.2011 in the above appeal setting aside the order of the Board. It is

the said order which has been impugned against which this appeal has been preferred by the Applicant/Andhra Pradesh Pollution Control Board.

6. *Per contra*, the averments in the counter affidavit of 1st respondent/industry run as follows:

The Appellate Authority had set aside the order of the Board directing the 1st respondent/industry to stop all activities in the present premises by 31.07.2011 based on the report of the 1st respondent/industry filed before the Hon'ble Supreme Court of India in February 2002 as well as the latest status report dated 04.03.2011 filed by the Board. The Appellate Authority took into consideration of the report of the Board filed before the Hon'ble Apex Court wherein it was stated that there was no water pollution from the 1st respondent/industry and that there were no boilers or furnaces except diesel generator sets which were occasionally used during power cut. There was no release of SO₂/NO_x emissions from the process of the 1st respondent/industry which is water polluting.

7. The Board in its wisdom constituted a Committee to inspect the 1st respondent/industry subsequent to the order passed by the Appellate Authority dated 25.03.2011 to inspect the industry which inspected the premises on 19.07.2012 and found that the industry was not meeting the standards which necessitated the Board to issue show cause notice dated 02.12.2011 and the hearing was held on 12.12.2011. However, based on the explanation of the 1st respondent/industry the Board again inspected the 1st respondent/industry on 03.03.2012 and filed the latest report dated 12.06.2012 before the Tribunal whereby the Board has admitted the fact that as on date the 1st respondent/industry is fully within the established norms. The 1st respondent/industry has been given the consent order vide order dated 29.09.2011 valid upto to 30.06.2002 and after that the industry has been making applications for renewal of consent every year which were never returned. The Board

has been accepting the fee which was being paid by the respondent/industry for renewal of consent order. The Board has never taken any action against the respondent/industry for over a period of 30 years as the industry is strictly adhering to the pollution control norms in letter and spirit. As per the latest report of the Board dated 12.06.2012 no illegal discharges are found during the inspection with regard to the water pollution and the 65 KLD of water is totally reused and also recycling facilities are in place. Sewage Treatment Plant has been provided to treat the domestic wastewater and after treatment it is used for gardening within the premises. Hence, the respondent/industry seeks to dismiss the appeal.

8. The only point for determination in the appeal is whether the order of the Appellate Authority made in Appeal No. 6/2010 dated 25.03.2011 has to be set aside for all or any of the reasons put forth by the appellant and the order of the 1st respondent/Board in the appeal before the Appellate Authority dated 02.12.2011 has to be restored.

9. The arguments advanced on either side were heard. The averments made in the pleadings and all the documents, materials and in particular the judgment under challenge are looked into.

10. Admittedly, M/s. Visaka Industries Limited, the 1st respondent herein an Asbestos Cement Products Manufacturing industry was established in the year 1985 and is a red category industry as per the classifications made under Schedule VIII annexed to the Notification issued by the MoEF, Government of India dated 20.12.1999. A consent order to operate the said industry was issued on 21.09.2001 which was valid upto 30.06.2002. It is not disputed by the Board that the respondent/industry has been applying for renewal of consent and no orders of renewal were passed. But, the Board has been accepting the fee for renewal of consent paid by the respondent/industry continuously. The application filed by the

respondent/industry for consent to operate the industry was returned by the Board by an order dated 28.12.2011 which was the subject matter of the Appeal No. 36/2012 before the Appellate Authority. The judgment by the Appellate Authority dated 15.09.2012 disposed of the appeal by setting aside the order of the Board and the matter was remitted back to the Board for considering the application of the respondent/industry subject to final outcome of the W.P.No. 19006 of 2012 in the Hon'ble High Court of Andhra Pradesh. As stated above, the said writ petition by an order of the High Court was transferred to the Tribunal and taken as Application No. 16 of 2013 (SZ).

11. Assailing the judgment of the Appellate Authority, it is contended by the applicant Board that the respondent/industry is under red category as per the classification in the Notification dated 20.12.1999 issued by the Ministry of Environment and Forests (for short 'MoEF') and the said industry is also recognised in the list of polluting industry as per G.O.Ms. No. 2, Environment, Science and Technology (Environment) Department dated 23.01.1995 of the Government of Andhra Pradesh since the said industry has high pollution potential. In view of the Government policy for shifting industries located within 10 km radius of the lakes there arose a necessity to issue a direction to the 1st respondent/industry to stop its activities and shift its location.

12. The Hon'ble Apex Court has also issued direction for shifting of industries located within 10 km radius from the lakes. In view of the decision of the Apex Court and G.O. Ms. No. 111 dated 08.03.1996 of the Government of Andhra Pradesh, various industries located within 10 km radius of the said lakes were identified and orders were also issued for their relocation. The 1st respondent/industry was being reviewed for its performance periodically. In a meeting held on 08.11.2010 by the Task Force Committee, the 1st respondent/industry was reviewed and suitable direction *inter alia* were issued to the industry on 31.12.2010 to stop all its activities in

the present premises by 31.07.2011 and shift to the alternate site provided by the Andhra Pradesh Industrial Infrastructure Corporation or any other place and also to furnish a bank guarantee for Rs.10,00,000/- (Rupees ten lakh) only and thus, the direction issued to the 1st respondent/industry for stopping activities and relocation was based on the sufficient reasons warranted by the circumstances and in view of the order of the Apex Court.

13. In order to substantiate the above, the learned counsel for the applicant took the Tribunal to G.O. Ms. No. 2, Environment, Science and Technology (Environment) Department dated 23.01.1995 and G.O. Ms. No. 111 dated 08.03.1996 of the Government of Andhra Pradesh. The judgment of the Hon'ble Supreme Court made in the *Andhra Pradesh Pollution Control Board Vs. M.V. Naidu reported in 2001(2) SCC 62* in support of the order passed by the Board. The learned counsel for the applicant relied on the report along with the observation made by the committee consisting of senior officers of the Board, who made the inspection of the industry in question on 19.11.2011. Countering all the above contentions, the counsel for the 1st respondent/industry would submit that the judgment of the Appellate Authority has to be sustained since it was thoroughly based on the report of the Board filed before the Hon'ble Supreme Court of India in 2/2002 and as well as the latest status report dated 04.03.2011 filed by the applicant before the Appellate Authority. Pointing to the report filed by the Board before the Apex Court, the counsel would submit that there was no water pollution caused by the 1st respondent/industry and that there are no boilers, furnaces except diesel generator sets which were occasionally used during power cut and there was no release of SO₂/ NO_x emission from the process of the 1st respondent/industry which were polluting the atmosphere. The latest report dated 04.03.2011 would clearly indicate that the emission level of 1st respondent/industry was within the prescribed parameters and there was no water pollution.

14. While filing the writ petition the respondent Board in the writ petition has taken an untenable stand that subsequent to the impugned judgment by the Appellate Authority, the Board had constituted a committee to inspect the industry which made an inspection on 19.11.2011 and found that the industry was not meeting the standards which necessitated the Board to issue a show cause notice on 02.12.2011 and the hearing was held on 12.12.2011 and following the explanation submitted by the industry, the Board made another inspection on 03.03.2012 and filed a latest status report dated 12.06.2012 which fully supported the case of the 1st respondent/industry and never stood in favour of the applicant/Board. The 1st respondent/industry has been in existence for more than 3 decades without any complaint from any quarters and nearly 500 employees are working in the industry, who were residing very close to the 1st respondent/industry, but no one has complained of any health issue or otherwise. The 1st respondent/industry has been subjected itself to periodic analysis of ambient air quality and report of the Government approved laboratory has certified that the 1st respondent/industry is adhering to the pollution norms.

15. Based on the report filed by the applicant/Board, the Appellate Authority set aside the order and strangely within 4 months from the report the Board reconstituted another committee to inspect the 1st respondent/industry as if it was operating beyond the pollution control norms. But, latest report has tacitly admitted the fact that the 1st respondent/industry is very well within pollution norms. The learned counsel took the Tribunal to the latest inspection report of the 1st respondent/industry made by the Board. The Board cannot place any reliance on G.O. Ms. No. 111 dated 08.03.1996 with regard to the location of the industry within 10 km radius of both the lakes since the Hon'ble Apex Court directed the Board to file the report with regard to the existing industries. The Board in its report has clearly admitted the 1st respondent/industry does not have water polluting potential. All these

would be clearly indicative of the fact that the 1st respondent/industry is strictly adhering to all pollution control norms. Taking into consideration of all the above, the Appellate Authority has made the impugned judgment which has got to be sustained.

16. As could be seen from the available materials, the 1st respondent/industry is an asbestos cement products manufacturing industry falling under red category and is in existence from 1981. G.O. Ms. No. 111 dated 08.03.1996 of the Government of Andhra Pradesh speaks on the Government policy for shifting the industries located within 10 km radius of both the lakes in order to protect the same from pollution. The said Government order was taken up for consideration *inter alia* by the Apex Court in *Andhra Pradesh Pollution Control Board Vs. M.V. Naidu reported in 2001(2) SCC 62* and the paragraph 75 of the judgment reads as follows:

“ 75. The State of Andhra Pradesh is, therefore, directed hereby to identify those industries located within 10 km radius of these two lakes and to take action in consultation with the A.P. Pollution Control Board to prevent pollution to the drinking water in these two reservoirs. The State and the Board shall not permit any polluting industries within 10 km radius. A report shall be submitted to this Court by the State of Andhra Pradesh in this behalf within four months from today, in regard to the pollution or pollution potential of industries, if any, existing within 10 km of the lakes is received, the matter may be listed. Point 6 is decided accordingly.”

17. Following the said order of the Apex Court, dated 01.12.2000, 02.08.2011 and 05.11.2001, an action taken report was filed by the Board dated 01.02.2002 and

the said report was accepted by the Apex Court with observations that no more order was required. The final part of the said action taken report reads as follows:

“ Accordingly, the A.P. Pollution Control Board has initiated action as directed by the State Government and issued directions to 55 industries direction “ not to manufacture any product without prior permission of the Board”, issued closure orders to 13 additional industries, issued directions to 6 industries directing “ not to start any process/product, which generate pollution” and issued directions to 5 pollution potential industries directing “ not to start ny new process/product.” The Action Taken Report (31 copies) of the Board is enclosed for information and necessary action.”

18. The reading of the report would clearly indicate that the directions issued were to 55 industries. It is not made known by the applicant as to under what category of these 55 industries the 1st respondent/industry would fall. It is pertinent to point that the Apex Court in its order has directed the Andhra Pradesh Government to identify the industries located within 10 km radius of the lakes. It is true that the State Government and the Board were directed not to permit any polluting industries within 10 km radius and a report was to be filed within four months there from with regard to the polluting and pollution potential industries, if any existing within 10 km radius of the lakes. It remains to be stated that the Board never stated in the report that the 1st respondent/industry was a polluting or pollution potential industry, though, admittedly it is existing within 10 km radius of the lakes.

19. It is not in controversy that the 1st respondent/industry was commenced in the year 1981 and the consent order dated 29.01.2001 was valid upto 30.06.2002. All applications filed for renewal of consent were kept by the Board without any orders either way. But, the Board was accepting necessary fees for every year. It is a matter of surprise to note that no notice was issued before the inspection made on 10.09.2010. At no point of time even before or after the passing of the G.O.No. 111 dated 08.03.1996 or after filing of the report pursuant to the direction of the Hon'ble Supreme Court, the 1st respondent/industry was found to be a polluting industry. The impugned order passed by the Board dated 31.10.2010 reads as follows:

1. *The industry uses Asbestos fiber, cement, fly ash, cotton rock pulp and hard ground waste as raw material for producing asbestos cement sheets and accessories.*
2. *The industry uses about 80 KLD of water in the process for mixing the raw materials, 15 KLD for cooling make-up and 20 KLD for domestic purposes.*
3. *The industry generates about 65 KLD of process waste water and 20 KLD of domestic waste water.*
4. *The industry was collecting the process water into two numbers of conical tanks of capacity 1 lakh liters each and after settlement this water was reused into the process. The domestic waste water disposed into septic tank followed by soak pit.*
5. *The industry has provided bag filter and wet scrubber followed by chimney of height about 40 ft. to control the asbestos dust emissions emanated from the fibre mill. The industry has also provided cyclone dust collector to control cement dust emission from the site.*

6. *The industry generates solid wastes such as process sludge of 4 tonnes per annum and broken hard pieces of 685 tonnes per annum. They were collecting the process sludge and re-used in the process. The broken hard pieces were collected and recycled through the wet ball mills.*
7. *The industry has not acquired alternate site. The industry did not furnish any action plan for shifting the unit.*

20. On the strength of the above, the impugned direction was given to stop all activities in the present premises by 31.07.2011 and to shift to the alternate site. It remains to be stated that the Board, though not satisfied with explanation of the 1st respondent/industry, again caused an inspection to be made on 03.03.2012 and file a status report dated 12.06.2012 before the Appellate Authority. The following observations were made by the committee at the time of inspection of the 1st respondent/industry:

- *The industry has provided STP to treat the domestic waste water and after treatment it is used on land for gardening within the premises.*
- *The industry has provided 3 Nos. of wet ball mill for grinding broken and waste asbestos cement sheets. After grinding, is reused into the process.*
- *The industry provided 5 machines for cutting of broken pieces into small chips which is used for brick making. The industry also provided 4 brick manufacturing machines to make bricks with the waste asbestos chips.*
- *The industry constructed storage area to store the broken asbestos pieces.*

21. The above would be clearly indicative of the fact that the 1st respondent/industry was fully adhering to all pollution control norms and entire water used in the industry is totally re-cycled and that illegal discharge was not found during the inspection and with regard to the water pollution, it is stated that 65 KLD of water was totally re-used and there were recycling facilities and STP has also been provided to treat the waste water and after treatment used for gardening within the premises.

22. The report of the applicant/Board made in Letter No. 2079/PCB/RO-I: SRD/2012-466 dated 12.06.2012 in paragraphs 9, 10 and 16 may be relevant to be pointed out here:

“9. SOURCE AND CONTROL OF POLLUTION:

- | | |
|-----------------------------------|-------------------------------------|
| i. Source of water supply | : Borewell |
| ii. Water consumption (KLD) | |
| a) Process | : 80 KLD |
| b) Washings | : Nil |
| c) Boiler feed | : Nil |
| d) Cooling (make up) | : 15 KLD |
| e) Gardening/Irrigation | : Nil |
| f) Domestic | : 20 KLD |
| Total | : 115 KLD |
| iii. Waste water generation (KLD) | |
| a) Process | : 65 KLD (reused into the process) |
| b) Washes | : Nil |
| c) Cooling bleed off | : Nil |
| d) Boiler blow down | : Nil |
| e) Re-generation | : Nil |
| f) Domestic | : 20 KLD |
| Total | : 20 KLD |

10. TREATMENT FACILITIES:

- a) Treatment units (please indicate names and sizes) : The industry has provided re-cycling facility consisting of 2Nos. of collection tanks- 85 KL each and 1 No. of settling tank- 50 KL. After settling in the settling tanks, the effluents are recycled into the process.
The industry generates 25-30 KLD of domestic waste water. At present, the industry has provided STP to treat the domestic waste water and after treatment, it is used on land for gardening within the premises.
- b) Whether all the units of ETP are in operation, if not state the reasons. : --
- c) Quantity of treated water reused(KLD) : 65 KLD
- d) Points of effluent (legal) sample collected : --
- e) Points of disposal : At present, the industry has provided STP to treat the domestic water and after treatment it is used on land for gardening within the premises.

16. During inspection of the industry on 03.03.2012, it was observed that:

- The industry has provided STP to treat the domestic waste water and after treatment it is used on land for gardening within the premises.
- The industry has provided 3 Nos. of wet ball mill for grinding of broken and waste asbestos cement sheets. After grinding is reused into the process.
- The industry provided 5 machines for cutting of broken pieces into small chips which is used for brick making. The industry has also provided 4 brick manufacturing machines to make bricks with the waste asbestos chips.
- The industry constructed storage area to store the broken asbestos pieces.

28. Thus, it could be seen that the 1st respondent/industry is neither a water polluting industry nor a pollution potential industry. The contentions put forth on the side of the applicant/Board that the directions to stop the activities and for shifting was issued to the 1st respondent/industry only in view of the adherence to the order of Hon'ble Supreme Court cannot be countenanced. The Apex Court has issued a direction to find out and file a report in respect of all the industries situated within 10 km radius of the lakes, but directed the State/Board not to permit any polluting industries within 10 km radius. Hence, to sustain the above direction to stop and shift the 1st respondent/industry the applicant/Board must be able to show that the 1st respondent/industry is a polluting or pollution potential industry. In the instant case, the 1st respondent/industry is shown to be situated within 10 km radius, but not as an industry polluting or with pollution potential. The Appellate Authority has correctly pointed out that the 1st respondent/industry is not at all a polluting industry to which the directions issued by the Hon'ble Supreme Court with regard to the relocation of industries can be applied. The Appellate Authority has also pointed out the 1st respondent/industry listed as Sl. No. 75 in the report though shown as falling under, red hazardous and 30 category, there was no water pollution from the industry, there was no emission of SO₄ or NO_x emission from the process, that there was no boiler or furnaces except diesel generator set which was occasionally used during power cut, that the industry is meeting the standards of pollution control norms. The contentions put forth by the 1st respondent/industry that the asbestos industry is kept under red category mainly due to the potential for occupational health hazards to those working in the industry and hence, the industry is to be exempted from the list of industries which are possible source of pollution threat to both the lakes has to be

accepted. The 1st respondent industry which came into existence in the year 1999 and operational all along was in the list for careful monitoring of its operations from the year 2002 onwards. But, no action was taken all along these years cannot but be due to the meeting and maintaining of the prescribed standards all these years.

29. As stated above, even the latest status report dated 04.03.2011 stood in support of the case of the 1st respondent/industry that the emission levels were within the prescribed levels and does not support the case of the applicant directing the 1st respondent/industry to stop its activities and shift to alternate place.

30. Thus, the Tribunal is unable to find any reason or circumstances to interfere with the reasoned judgment of the Appellate Authority made in Appeal No. 6/2010. Hence, the application is dismissed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai,
26th November 2013

NGT