

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.148 of 2014 (SZ)

IN THE MATTER OF:

R. Rajendran

Chinnavarikam Village

Ambutr Taluk

Vellore District

... Applicant

AND

1. The Tamil Nadu Pollution Control Board

Rep. by its Member Secretary, Chennai

2. The Tamil Nadu Pollution Control Board

Rep. by its District Environmental Engineer

Vaniyambadi

3. The State of Tamil Nadu

Department of Environment

Rep. by its Director

Fort St. George, Chennai

4. M/s. N. Muneeba Tanning Company

Thuthipet, Ambur Taluk

Vellore District

.... Respondents

Counsel appearing for the applicant: Mr. A. Yogeshwaran

Counsel appearing for the respondents: Smt. Rita Chandrasekar for Respondent Nos. 1 & 2; Mr. M.K. Subramanian for Respondent No.3; M/s. K. Ramu & R. Vishnu for Respondent No.4

ORDER

Quorum: Hon'ble Justice Dr. P. Jyothimani, Judicial Member

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

Delivered by Justice Dr.P. Jyothimani, Judicial Member dated 5th July 2016

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

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

1. The applicant owns agricultural lands in Survey No.31/A of Chinnavaraikkam Village, Ambur Taluk. Aggrieved by the discharge of effluents by the fourth respondent tannery into his lands, the applicant has prayed for initiating appropriate action by the respondents 1 to 3 against the fourth respondent, apart from closure of its unit and directing the official respondents 1 to 3 to assess compensation on the same scale, as assessed by the Loss of Ecology Authority in respect of the land affected by the tannery effluents and award compensation and also to direct the fourth respondent to pay compensation to the applicant for the damage caused to the applicant's lands.

2. On coming to know that on 7.1.2014 a sewage cleaning tanker lorry bearing Registration No.TN 67 C 3867 was found discharging tannery effluents in his land, the applicant immediately informed the same to the second respondent Pollution Control Board over phone and the officers of the second respondent Board have inspected the site and made enquiry after collecting samples. Thereafter, the second respondent Board has filed a complaint with Oomerabad Police Station and FIR was registered on 07.01.2014 in which it is stated that the driver of the tanker lorry informed that the effluent was discharged on the instructions of the fourth

respondent. The FIR, on investigation, has been given Cr.No.10/2014 and forwarded to the learned Judicial Magistrate, Ambur.

3. It is stated that afterwards the Board has ordered closure of the fourth respondent's unit on 03.02.2014 and directed disconnection of electricity. It is seen in the report of the Board dated 28.01.2014 that on the analysis of the discharge made in the applicant's land the TDS was found to be 7904 mg/l. The analysis was of the water that had stagnated in the applicant's land and the applicant has filed a photograph of the tanker lorry discharging effluents. According to the applicant, it proves beyond doubt along with other documents of the conduct of the fourth respondent who is liable for prosecution and the fourth respondent unit has been closed temporarily at the instance of the Board. However there is every possibility of allowing the unit to continue to function and therefore the present application is filed on various grounds that the conduct of the fourth respondent in discharging effluents into the applicant's land is illegal, contrary to the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Environment (Protection) Act, 1986. For the conduct of the fourth respondent, if it is allowed to function, it will amount to rewarding for the illegality, especially when the livelihood of the applicant is greatly affected and the applicant is entitled to compensation for the damages caused to his land, apart from many other grounds.

4. The first and second respondent Board in their reply dated 4.7.2014 have stated that the fourth respondent's unit viz., M/s. Muneeba Tanning Company situated in Thuthipet Village, Ambur Taluk is a member of Common Effluent Treatment Plant (CETP), a company of M/s Ambur Tannery Effluent Treatment Co. Ltd., Thuthipet Sector, Ambur (M/s AMBURTEC CETP). The fourth respondent unit has obtained "Consent" from the Board for processing raw skin to finished leather of 26 T/M and for the discharge of 30 KLD of trade effluent into

the said CETP for further treatment in the Zero Liquid Discharge (ZLD) system provided by CETP. The fourth respondent unit was closed by the Board on various occasions viz., 25.11.2013 when it was closed along with other member units of CETP since there was a failure to achieve ZLD and they were found discharging untreated effluents on land and into Palar River. Subsequently the unit was permitted to use power supply only for lighting purpose on 29.11.2013 subject to certain conditions.

5. In the meanwhile, the present applicant has made a complaint on 07.01.2014 stating that the effluents from the fourth respondent unit was being transported and discharged on his (applicant) land and therefore requested for action. The said complaint was investigated on 07.01.2014 and found that the effluents generated from the unit and accumulated in tanks in the tannery were transported in private vehicle and discharged on applicant's land and the effluents were found to be stagnated. Therefore FIR was filed in Oomerabad Police Station on 7.1.2014 under Sections 277 and 284 IPC against the tanker lorry owner S.R.S. Sakthi (M/s Priyanka Compressor Septic Tank Cleaning) and also against the defaulting tannery unit. The power supply given to the fourth respondent's unit for lighting purpose was also withdrawn on 03.02.2014. It is stated by the Board that at present the applicant's location is dry and no further effluent is found in the area. It is further stated that the unit has recently installed Sewage Treatment Plant (STP) to treat the sewage and avoid transportation of sewage in tankers. The effluent from the unit was made to let into conveyance system of the CETP and the unit has assured on 20.03.2014 that such incident will not be repeated in future and requested for resumption of power supply and production. The unit and its surroundings was inspected by the District Environmental Engineer, Vaniyambadi on 20.03.2014 and it was found that the fourth respondent unit remained closed and power supply disconnected, effluents discharged on private land and the said

area was found to be dry. The fourth respondent has installed STP on its own to treat the sewage generated from the premises and it is found to be under stabilization, the unit has provided pre treatment system and installed filter press for dewatering sludge, there was no transport of any sewage/trade effluent from the respondent unit and no fresh complaints are received and the unit was found to cooperate with the CETP in the implementation of ZLD system.

6. In these circumstances, the request of the unit for suspension of closure order and restoration of power supply was considered by the Board and the Board ordered suspension of closure order for a period up to 16.05.2014 in the proceedings dated 29.04.2014 after obtaining bank guarantee for a sum of Rupees Five Lakhs.

7. On the applicant filing the present application this Tribunal passed an order on 20.5.2014 directing the fourth respondent not to carry on any activity until further orders and thereafter the Board has ordered closure and stoppage of power supply.

8. As stated above, when the application was taken up for admission, in the order dated 20.05.2014, this Tribunal has granted interim order. The fourth respondent has filed M.A.No.157 of 2014 for vacating the above said interim order and the Tribunal, after elaborately discussing the entire facts, in the order dated 22.07.2014, has vacated the earlier order of injunction and permitted the fourth respondent unit to carry on its operation with restoration of power supply, provided the fourth respondent is otherwise legally eligible to continue its activities.

9. It is also relevant to note that immediately after the interim order was passed by this Tribunal on 22.07.2014 the applicant has filed M.A. No.137 of 2014 for fixing an early date for hearing and also filed M.A. No.135 of 2014 to deal with the

fourth respondent for disobeying the interim order of the Tribunal in accordance with the powers conferred under Section 26 of the NGT Act, 2010.

10. Having noted that admittedly the unit of the fourth respondent was not working as on date and without going into the merits of the case, this Tribunal in the order dated 13.6.2014 has closed M.A.135 of 2014 as unnecessary.

11. The third respondent has filed a memo, adopting the reply filed by the respondents 1 and 2.

12. In the reply affidavit filed by the fourth respondent dated 12.07.2014, the fourth respondent while stating that the applicant is liable for suppression of material facts, stated that the Board which has originally passed order of closure of the unit on 03.02.2014 and after elaborate enquiry and inspection, in the order dated 29.04.2014 the Board has suspended the order of closure. Suppressing the above facts the applicant has filed the original application and obtained the interim order and for that reason the application is liable to be dismissed, especially when the applicant has chosen to plead for an equitable relief. It is also stated that the applicant who happens to be the Secretary of the Vellore District Welfare Committee was aware of the revocation of closure order dated 29.04.2014 and knowing the same he has filed the application on 13.05.2014. The filing of the application is an abuse of process of law especially when the Board which being a statutory authority, found in the order dated 29.04.2014, that the fourth respondent has removed the effluents discharged on the land of the applicant and therefore on the date of filing of the application, the applicant's land was dry and the said factum has not been revealed.

13. On the merits of the case, it is the case of the fourth respondent that it is admittedly one of the members of the CETP of M/s. Ambur Tannery Effluent Treatment Co. Ltd., (AMBURTEC). That apart, the fourth respondent is also

having its own primary effluent treatment system, as confirmed by the Board in the order dated 29.04.2014. It is stated that on 25.11.2013 the units of all the 49 members of CETP were directed to be closed and electricity disconnected and that closure order continued till 18.02.2014 when order of suspension of closure was passed by the Board. By virtue of the false complaint made by the applicant, the fourth respondent unit which was closed along with other CETP units from 25.11.2013 to 29.04.2014 continued to remain closed pursuant to the interim order passed by this Tribunal on 20.5.2014 and therefore it is clear that from November 2013 the fourth respondent unit has not been functioning. If that is the case, it is not known as to how the fourth respondent unit would have discharged tannery effluent into the applicant's land. The fourth respondent has also given a tabular column, giving various dates to show the particulars from 25.11.2013 onwards till the ex parte order of injunction was granted by this Tribunal on 20.05.2014 which was vacated on 22.07.2014 indicating that the unit was closed and therefore there is no scope for the fourth respondent unit to discharge its trade effluents. The order of the Board in arriving at a conclusion that on 07.01.2014 trade effluents was discharged by the fourth respondent without even furnishing copy of any such report, is arbitrary and patently illegal. From the sample taken by the second respondent which was sent to the first respondent for testing on 28.01.2014 it is evident that the sample taken pertains to only sewage and not tannery effluent. In the said sample TSS was shown to be around 164 mg/l, while a tannery effluent will contain TSS around 3500 mg/l. Likewise, TDS in a tannery effluent will be around 20,000 mg/l whereas the sample taken by the first respondent from the project proponent shows TDS 7904 mg/l. Likewise, BOD & COD of the sample shows 37 and 332 respectively while if it is really the tannery effluent, it will be around 630 and 2184 mg/l. This itself will disprove the stand of the applicant and the Board that the fourth respondent has discharged tannery effluent through an

independent contractor M/s. Priyanka Sewage Cleaning Company. The sample taken by the project proponent also disproves the claim of the applicant. In fact, subsequent closure order of the unit of the fourth respondent made by the first respondent on 3.2.2014 came to be suspended after conducting fresh inspection and satisfying the compliance of conditions in the order dated 29.4.2014 and after obtaining bank guarantee from the project proponent for a sum of Rupees Five Lakhs, valid for two years. After closure of the unit of CETP on 26.11.2013 the subsequent restoration of electricity for few days was only for office purposes and not for running the unit and there was no activity of the fourth respondent from 26.11.2013 to 30.04.2014. It is the case of the project proponent that the filing of the present application by the applicant is only to build up his case pending in the Supreme Court as against the order of dismissal of a PIL by the Division Bench of Hon' ble High Court of Madras. Merely relying upon discharge by M/s. Priyanka Sewage Cleaning Company, no inference can be drawn that it was done at the behest of the fourth respondent as the said cleaning company undertakes work of cleaning from a number of units and it is not the sole agent of the fourth respondent. It is also stated that the land of the applicant has not been put to cultivation for nearly five years. The project proponent has also categorised about the conduct of the applicant to defend from the claim of damages which is a discretionary remedy. According to the project proponent, non impleadment of M/s. Priyanka Sewage Cleaning Company itself shows the real intention of the applicant. It is further stated that the raw materials used by the project are perishable in nature and by the conduct of the applicant, the project proponent has already suffered heavy amount of loss, apart from dealing with 50 employees. There is no cause of action for the applicant to seek damages and therefore the project proponent has prayed for dismissal of the application with cost.

14. Mr. Yogeshwaran, learned counsel appearing for the applicant made a submission that the order of the Board dated 3.2.2014 directing closure of the fourth respondent unit based on a complaint made by the applicant and also registering FIR on 7.1.2014 itself shows that the Board was satisfied that the fourth respondent was found discharging tannery effluents on the land of the applicant. He would submit that when it is admitted by the fourth respondent that the unit was closed between 25.11.2013 till the interim order was vacated, there is no question of sewage being generated in the unit and it can only be the trade effluent stored in the unit which would have been discharged. He has also relied upon the specific ground taken by the Board in its reply that on investigation of the complaint made by the applicant on 7.1.2014 it was found that effluents generated from the unit and accumulated in the tank were transported in a private vehicle and discharged in the applicant's land. He has also submitted that the fourth respondent unit was closed from 2013 onwards along with other members of CETP, there was no right on the part of the fourth respondent either in storing the trade effluents already generated or sewage and such activity is in violation of the Water Act. Therefore, according to him, violation is clear and if such illegal storage is made under the provisions of the Water Act, the fourth respondent is liable with a punishment of imprisonment which may be for a period up to six years. In such circumstances, the duty of the project proponent is to transport the effluents by aeration tank by following the procedure. Therefore, according to him, either storage of trade effluent or sewage is in violation of the Water Act and the unit cannot be permitted to say that it has achieved ZLD by following the illegal practice of transporting and discharging its effluents. According to him, there is no necessity for the applicant to prove the loss suffered and the same is presumed by the illegal conduct. The order of the Board dated 03.02.2014 has not been challenged by the project proponent.

15. It is the contention of Mr. K. Ramu, learned counsel appearing for the fourth respondent that the application is motivated and the applicant is not an agriculturist and therefore the claim of damages on the face of it is not maintainable. The applicant, being a member of Vellore District Monitoring Committee filed writ petition which was dismissed as against which SLP was filed and therefore to prove his case the present application is filed.

16. He also wondered as to how the District Environmental Engineer, Vaniyambadi was able to conduct inspection of the spot on 07.01.2014 at 9.30 a.m. when the applicant's complaint on the said date itself is at 8.30 a.m. He has also questioned the veracity of the analysis report of the Board dated 28.01.2014 and he submits that when the report says that the effluent was found stagnated at applicant's land, it is not known as to how the project proponent can be fixed with the responsibility especially when admittedly the unit of the proponent which is a member of CETP and along with other units continued to be closed from 25.11.2013 and there is no occasion for transporting their effluents. While comparing the analysis report of the Board dated 28.01.2014 and 15.04.2014 he submits that when admittedly the unit was not functioning on 27.03.2014 the TDS which was 7904 on 07.01.2014 has become 20,476 on 27.03.2014. Therefore, he submits that the Board's analysis report cannot be relied upon. He has also submitted that the tanker lorry which is alleged to have discharged effluents in the applicant's land is not the sole agent of the fourth respondent and he is the person who has been commonly employed by the other tanneries also and it is possible that the transportation would have taken place from the other places also for discharging in the applicant's land. According to him, that is the reason why the applicant has deliberately not chosen to implead the tanker lorry owner or driver in this application. In the absence of any acceptable evidence that it is the fourth respondent who has discharged the effluents into the appellant's land, the prayer as

such cannot be granted. He has also referred to the tabular column given in the reply filed by the project proponent to show as to how it is impossible for the fourth respondent to discharge its tannery effluents at all. It was only on 29.4.2014 the Board itself has passed order of suspension of its closure direction dated 3.2.2014 and the present application has been filed immediately after the suspension of closure order which shows how watchful the applicant is in respect of the function of the fourth respondent unit. He has also insisted that the closure of the unit for more than three months has been deliberately suppressed and a person claiming equitable relief before this Tribunal is expected to do his duty in his turn which he has deliberately failed and therefore he is not entitled for any remedy as claimed in the application. To substantiate the above said contention, he relied upon the judgment of the Supreme Court in **V. Chandrasekaran V. Administrative Officer (2012) 12 SCC 133**. Regarding the claim of damages, it is his submission that in the absence of any material to show that loss has been incurred by the applicant, he is not entitled for any damages. The allegation that the applicant's livelihood is affected is wrong in the sense that when the Electricity Board has laid high tension line over the land of the applicant, the applicant has filed a writ petition on the ground of damage to the land which was dismissed. He also relied upon some of the photographs filed on behalf of the fourth respondent to show that there are trees, including coconut trees which are still standing in the land concerned. Damage cannot be claimed based on apprehension, unless the same are pleaded and proved. In the absence of specific pleading and proof, the applicant is not entitled for damages. He has also relied upon the monthly electricity consumption report and collection details to show that during the relevant point of time the electricity consumption of the fourth respondent unit was normal and there is nothing to show that the unit was running inspite of the fact

that it was under closure order. Therefore, he submits that the application is devoid of any merits and liable to be dismissed.

17. We have considered the contention raised by the learned counsel appearing for the applicant as well as the respondents, referred to the pleadings and documents filed and given our anxious thought to the issues involved in this case.

18. On such analysis, the following issues arise for consideration in this case before the Tribunal:

(1) Whether it can be believed that the fourth respondent has discharged tannery effluents/sewage effluents into the land of the applicant on 1.7.2014. If so, to what relief the applicant is entitled to?

(2) Whether the fourth respondent unit is liable to be closed?

(3) Whether the applicant is entitled for any compensation for damages stated to have been caused to his land by the conduct of the fourth respondent?

19. Issue No (1) Whether it can be believed that the fourth respondent has discharged tannery effluents/sewage effluents into the land of the applicant on 1.7.2014. If so, to what relief the applicant is entitled to?

It is not in dispute that the fourth respondent unit is one of the members of CETP run in the name of M/s. Ambur Tannery Effluent Treatment Co. Ltd. Thuthipet Sector, Ambur in which there are totally 49 member tanneries. Based on a newspaper report in Dhinamalar dated 20.11.2013, complaining about the tannery effluents being discharged into the river Palar apart from municipal sewage arising from municipal limits of Ambur also being discharged in Palar river, causing water pollution, the Board has conducted an inspection on 20.11.2013 and has found the following irregularities:

“1. During inspection of the Palar river and its surroundings it was noticed that Municipal sewage generated in and around Ambur municipality area is being discharged in to river Palar thereby contaminating the ground water and soil.

2. The 49 member tanneries located in Periyavarigam and Thuthipet area of Ambur have formed a Common Effluent Treatment Plant (CETP) in the name and style of M/s.AMBURTEC Ltd, Thuthipet Sector. The effluent generated from the member tannery units is being conveyed through the pipe line into the CETP for further treatment and disposal.

3. The effluent received in the CETP is being treated in the Physico-chemical biological treatment system followed by RO and Mechanical Vapour Recompression System (MVR). The RO permeate is recycled back into the member tanneries for process and RO Reject is being disposed through MVR followed by crystalizer.

4. There is no discharge of effluent from member tanneries into River Palar and the same was noticed during inspection.

5. However the M/. AMBURTEC CETP (Thuthipet Sector) continue to discharge untreated and partially treated trade effluent into Palar river from the CETP as noticed during inspection. The partially treated effluent of about 400-500 KLD is being discharged into a marsh land area on the North Eastern side of the said CETP which overflows into a earthen drain reaching River Palar. The above facts were also reported to the Board vide this office IR dated 30-10-2013 and 11-11-2013.

6. The Board has issued direction to this CETP vide procDt.13.9.2013 that

a) the CETP shall restrict the quantity of inflow of trade effluent received from its member tannery units to 50% (1100 KLD) of its consented quantity (2219 KLD) and operate the existing ZLD system efficiently and continuously so as to achieve ZLD at all times without discharging untreated/treated trade effluent outside the premises and

b) The CETP shall instruct the Member tannery units to restrict their production to 50% of their Consented capacity and correspondingly reduce the effluent generation by 50% until the installation and commissioning of 3rd stage RO and additional MEE system by the CETP.

7. At present the inflow of effluent into the CETP is found to be 1300 KLD based on the verification of records and during inspection on 20.11.2013 which is more than the restricted quantity of 1100 KLD which reveals that the member tannery units have not restricted the production quantity of 50% and not restricted the effluent generation by 50%.

8. All the components of CETP such as Physio-chemical, biological, SBR system, Reverse Osmosis, Mechanical Vapour Recompression system and Crystalizer were found to be in operation.

9. The RO Permeate was recycled and part of RO reject fed into MVR, Crystalizer and part of RO reject is discharged into Palar along with partially treated effluent. There is no provision to store the IRO rejects since all the available tanks are filled with effluent.

10. *The equalization tank is filled with effluent without adequate free board and nearly 2000 KL of untreated effluent is stored in the equalization tank.*

11. *The sludge removed from the equalization tank was found to be discharged on land near equalization tank and found to contaminated soil and ground water.'*

12. *The CETP has discharged large quantity of untreated effluent into storm water drains and found to be accumulated in a low lying area near the sludge drying beds (SDB) thereby causing ground water/soil contamination.'*

13. *The CETP has discharged untreated effluent into the sludge drying beds and found to be full without any free board and found to be leaking through side walls and also it may overflow at any time.*

14. *The existing anaerobic lagoon and unused aerobic lagoons are filled with untreated trade effluent/UF rejects and RO plant rejects due to excess inflow of effluent which could not be able to handle with the available ZLD facility.*

15. *The CETP has laid a HDPE pipe line clandestinely leading from the CETP to the SLF area to discharge the partially treated effluent in the SLF premises and therefore the CETP is not achieving the ZLD and continue to violate the directions issued vide Proc. Dated 13.9.2013.*

16. *The CETP has dug 4-Nos large sized earthen pits within the SLF premises and stagnating partially treated effluent in the earthen pits and contaminating the soil/ground water therefore the CETP is not achieving the ZLD. However there is no discharge of effluent into the pits at present.*

17. *The unit has discharged partially treated effluent into marsh land area on the North eastern side of CETP and found to be overflowing into the earthen drain into sand borrow pits in the Palar river and therefore the CETP is not achieving the ZLD and continue to violate the directions issued vide Proc dated 13-9-2013.*

18. *The UF system is not operated to its full capacity due to excess suspended solids in the UF feed effluent (around 15-20 mg/lit) whereas the UF system can take effluent with low SS of about less than 5mg/lit. As a result the UF feed taken is 800-900 kld only against the permitted quantity of 1100 kld.*

19. *The Electro Magnetic Flow Meters (EMFM) attached at the Inlet/Outlet of various unit operations of the CETP are reset by the CETP often and hence the correctness of inflow of effluent into the CETP and the quantity of effluent treated in the CETP could not be ascertained. However during inspection of the CETP it has been observed that the inflow of effluent in to the CETP was 1300 KLD."*

20. The above facts reveal that based on the inspection conducted on 20.11.2013 the Board in its proceedings dated 25.11.2013 has directed the CETP of M/s. Ambur Tannery Effluent Treatment Co. Ltd., (AMBURTEC) Thuthipet Sector,

Ambur Taluk, Vellore District and its 49 member tanneries to be closed with immediate effect and therefore it is on record to show that the fourth respondent unit which is a member of CETP was also closed with effect from 25.11.2013 and electricity supply has been disconnected. It is relevant to note that even in the report of the Board dated 20.11.2013 there was a finding that there is no discharge of effluents from member tanneries into river Palar as it was noticed during the time of inspection. It was also found that the existing anaerobic lagoon and unused aerobic lagoons are filled with untreated trade effluent/UF rejects and RO plant rejects due to excess inflow of effluent which could not be able to handle with the available ZLD facility. Further, it is stated that the CETP has laid a HDPE pipe line clandestinely leading from the CETP to the SLF area to discharge the partially treated effluent in the SLF premises and therefore the CETP is not achieving the ZLD and continue to violate the directions issued vide Proc. Dated 13.9.2013.

21. Therefore, it is clear that the major defect was in the handling of CETP for which of course the individual units are also responsible. It is also not in dispute that in respect of fourth respondent unit there was restoration of power supply on 29.11.2013 only for the purpose of lighting. It is not anybody's case that by virtue of the restoration of power supply for lighting, the fourth respondent has run the unit in a clandestine manner.

22. It is in the above back ground, we have to see that on 7.1.2014 the applicant has complained of the fourth respondent discharging its trade effluents into his lands. Based on the said complaint to the Board, it is seen that on the same date i.e., on 7.1.2014 at 4.30 p.m the District Environmental Engineer of the Board at Vaniyambadi has complained to Oomerabad Police Station in which FIR was registered. On a reading of the FIR, one can understand that on 7.1.2014 the applicant has complained to the District Environmental Engineer of the Board at

8.30 AM that one Priyanka sewage cleaning tanker bearing Registration No.TN 67 C 3867 has discharged tannery effluents into the land in Survey No.31/A, Chinnavarikkam Village and the said tanker lorry has been detained by the applicant requesting the Board to take action. The FIR further states that on the same day at 9.30 AM, the District Environmental Engineer Mr. M. Senthilkumar has made an inspection at 9.30 AM and found that tanker effluents have been discharged. In the FIR it is stated that on enquiry of the driver one Manohar, he informed that it was from the tannery of the fourth respondent viz., Muneeba Tanning Company and at their direction the tannery effluents were taken by the tanker lorry and discharged in the applicant's land and as public have gathered in large number, the driver has escaped. Therefore, FIR was registered in Crime No.10/2014 under Sections 277 and 284 IPC. Nobody including the applicant has stated anything about any progress pursuant to the FIR and therefore it is presumed that the criminal case is still pending. The analysis report of the Board dated 28.1.2014 in respect of sample stated to have been collected on 7.1.2014 at 9.30 am at the point of collection viz., "stagnated at Rajendran's land" shows the following parameters:

S.No.	Parameters	Sample Code No.
		PS 1375 1222
General Core Parameters		
1.	pH	Number 7.4
2.	Total Suspended Solids	mg/1 164
3.	Total Dissolved Solids	mg/1 7904
4.	Chlorides as (C1)	mg/1 3764
5.	Sulphate as (SO4)	mg/1 263
6.	B.O.D. 3 days at 27° C	mg/1 37

7.	C.O.D.	mg/1	332
8.	Oil and Greese	mg/1	2.4
	Essential Determinants		
9.	Sulphides	mg/1	4.0
10.	Ammonical Nitrogen	mg/1	460
11.	Phenolic Compounds	mg/1	<0.0005 *
12.	Hexavalent Chromium	mg/1	<0.01 *
13.	Total Chromium	mg/1	<0.003 *
14.	Percent Sodium	%	25.0

23. In the proceedings of the Board dated 3.2.2014 the Board has cancelled the earlier proceeding dated 29.11.2013 granting electricity supply for lighting purpose of the fourth respondent. While passing such order, the Board has chosen to state as follows:

“However the District Environmental Engineer, Vaniyambadi in his letter dated 09.01.2014 under reference cited has reported that a tanker lorry used by M/s. N. Muneeba Tanning Company, Gudiyatham Road, Thuthipet, Ambur Taluk, a Member unit of M/s. AMBURTEC CETP (Thuthipet Sector) to collect, transport and discharge tannery effluent illegally was found discharging the tannery effluent on the land owned by Thiru R. Rajendran of Chinnavarikkam Village, Ambur Taluk, Vellore District on 07.01.2014. The effluent was found stagnated causing ground water pollution and public nuisance in the vicinity.”

24. While it is the case of the applicant himself that by 8.30 am on 07.01.2014 he saw the tanker lorry discharging the effluents, it is not known as to how the District Environmental Engineer, Vaniyambadi in his letter dated 09.01.2014 has stated as if he found that the fourth respondent was illegally discharging tannery effluents into the applicant’s land. By a subsequent proceeding of the Board dated 18.2.2014, the Board based on the inspection made on 6.2.2014 has suspended the closure direction issued on 29.11.2013 in respect of all the 43 members of CETP except few members which include the fourth respondent unit on the ground that

the fourth respondent unit has violated the Board's proceedings dated 29.11.2013. Therefore, it is clear that even on 3.2.2014 the fourth respondent unit remained closed. The non inclusion of the fourth respondent unit in the list of 43 units for suspension of closure order is not for the reason that inspite of the closure order, by taking advantage of restoration of power connection on 29.11.2013 the said unit has run its business clandestinely but only based on the complaint and FIR registered on 07.01.2014, as stated above.

25. There is yet another analysis report of the Board in ROA.No.1618/2013 – 2014 dated 15.4.2014 which is stated to be a report on the sample taken at the outlet of Aeration Tank collected on 27.03.2014 at 12.15 hours and the general parameters found are as follows:

S.No.	Parameters	Sample Code No.
		PS 1431 1677
General Core Parameters		
1.	pH Number	6.6
2.	Total Suspended Solids mg/1	3544
3.	Total Dissolved Solids mg/1	20476
4.	Chlorides as (C1) mg/1	9784
5.	Sulphate as (SO4) mg/1	3934
6.	B.O.D. 3 days at 27° C mg/1	630
7.	C.O.D. mg/1	2184
8.	Oil and Greese mg/1	4.4
Essential Determinants		
9.	Sulphides mg/1	64
10.	Ammonical Nitrogen mg/1	162
11.	Pheonlic Compounds mg/1	<0.0005 *

12.	Hexavalent Chromium	mg/l	<0.01 *
13.	Total Chromium	mg/l	<0.003 *
14.	Percent Sodium	%	75.0

26. A comparison of the analysis report of the Board dated 28.1.2014 which relates to the sample taken in the stagnant land of the applicant, and 15.4.2014 on the sample stated to have been taken on the outlet of the aeration tank of the fourth respondent shows remarkable contradiction. The TDS taken at the outlet of the aeration tank of the fourth respondent is stated to be abnormal i.e., 20476 mg/l while chlorides as 9784 mg/l. Even though the second report is much after the complaint given by the applicant and in the light of the facts of the case that it is not the applicant's case that even after 7.1.2014 such discharge of tannery effluents have been effected on his land continuously and therefore no significance can be attached to the second analysis report dated 15.4.2014. While answering the first issue, we are unable to understand as to how the same Board in the proceedings dated 29.4.2014 has ordered suspension of closure direction in line with other 43 member units upto 15.6.2014 and directed restoration of electricity supply. It is further astonishing to note that in the said order dated 29.4.2014, the Board has referred to a report given by the District Environmental Engineer, Vaniyambadi after inspection stated to have been conducted by him on 20.3.2014 and made the following observations which are favourable to the fourth respondent. For the purpose of appreciating the above said stand, it is relevant to extract the finding of the District Environmental Engineer, as incorporated in the order of the Board dated 29.4.2014 which is as follows:

“1. The unit remains closed and the power supply remains disconnected

2. The unit has removed the effluent discharged on private land and the area was found to be dry

3. The unit has installed STP (Sewage Treatment Plant) on its own to treat the sewage generated from the premises and found to be under stabilization

4. The unit has provided pre-treatment system and installed filter press for dewatering sludge and furnished photos with the letter cited above

5. There is no transport of any sewage/trade effluent from this unit and no fresh complaints have been received against the unit in this regard

6. The unit is found to co-operate with the CETP in the implementation of Zero Liquid Discharge system”

27. Immediately on passing of the said order of suspending the closure by the Board on 29.04.2014 the applicant approached this Tribunal by filing the above application on 13.05.2014, and an interim order was granted by this Tribunal on 20.05.2014 against the fourth respondent unit which continued till 22.07.2014. Eversince the original order of closure dated 25.11.2013, the fourth respondent was not virtually running its unit. It is true that there are certain contradictions in the sense that at one place it is stated as “effluent” and in another place as “tannery effluents”. In the absence of any categorical evidence and it is almost an admitted fact that the tanker lorry is not exclusively employed by the fourth respondent for transporting its effluents etc. and on the other hand, it is the specific case of the fourth respondent that the said tanker lorry is being employed by all 46 member units of CETP and in the circumstances that the applicant has not chosen to implead either the owner of the tanker lorry or the driver, it is not possible for this Tribunal to come to a conclusion that the discharge, whether tannery effluents or domestic effluents stated to have been made in the applicant’s land on 07.01.2014 is by the fourth respondent. Arriving at such conclusion against the fourth respondent, on the factual matrix of this case, will definitely result in substantial injustice at least at this point of time when the criminal proceedings are pending and the competent criminal court has not found that the discharge was made by the fourth respondent. In such view of the matter, were are unable to accept the

contention of the learned counsel for the applicant in respect of the first issue and accordingly the Issue No.1 is answered to the effect that there is no evidence to show that the fourth respondent has discharged its tannery effluents/domestic effluents into the land of the applicant. However, this finding is without prejudice to the final decision which may be taken by the competent criminal court which may not be influenced by any of the observations made by this Tribunal in respect of the above issue. The said issue is answered accordingly.

28. Issue No. (2) Whether the fourth respondent unit is liable to be closed?

The above issue can be answered on the basis of the analysis report of the Board dated 15.4.2014 extracted above which shows that on 27.03.2014 the TDS and Chloride level are abnormal. Even though the Board has ordered revocation of suspension on 29.4.2014, there is nothing on record to show as to how the Board has chosen to ignore its own analysis report dated 15.04.2014. It may be true that the CETP functioning as on date may be to the satisfaction of the Board. But in the absence of proper explanation by the Board in respect of its analysis report dated 15.4.2014, this Tribunal which is expected to see that pollution is abated, particularly in cases of 'red category' units like tanneries, cannot close its eyes and order in accordance with the direction of the Board dated 29.04.2014. In view of the same, Issue No.2 is ordered to the effect that the fourth respondent unit shall be closed and electricity disconnected, unless and until the Board conducts fresh inspection and satisfies itself that the fourth respondent unit is complying with all parameters and fulfilling the conditions stipulated by the Board. Such inspection shall be done by a responsible officer of the Board and only after the analysis of the samples taken is carried out in accordance with law and subject to the satisfaction of the Board, the Board is entitled to pass orders regarding the functioning of the fourth respondent unit. Till such orders are passed, we direct the

fourth respondent shall be closed and electricity disconnected. Issue No: 2 is answered accordingly.

29. Issue No.(3) Whether the applicant is entitled for any compensation for damages stated to have been caused to his land by the conduct of the fourth respondent?

In so far as it relates to the claim of compensation by the applicant, a bare reading of the pleadings show that the applicant has not proved any damages which are caused to him. Merely stating that the act itself is enough to show damages, in our considered view, is not sufficient in arriving at a conclusion regarding the alleged damages. It is no doubt true that patta in respect of the said land is in the name of the applicant. But there is no other record like that of adangal etc., to show that the applicant has been carrying on agricultural activities in the said land and by virtue of the discharge stated to have been made on 07.01.2014 his income has come down. In such circumstances, it is not possible for this Tribunal to arrive at a conclusion about the compensation payable to the applicant. It is also relevant to state that we have arrived at a conclusion in respect of Issue No.1 that there is no evidence as on date to show that the fourth respondent has in fact discharged either tannery effluents or domestic effluents into the applicant's land. Accordingly Issue No.3 is answered to the effect that the applicant is not entitled for any compensation, as claimed.

30. In view of the finding given above, application stands partly allowed and the fourth respondent unit is directed to be immediately closed and the Board, after a fresh inspection by its responsible officer which shall be within two weeks from the date of this order, is satisfied that the analysis report of the sample to be collected are complying with the parameters prescribed by it and the fourth respondent has complied with all other conditions which are stipulated it will be

open to the Board to pass appropriate orders in accordance with law. Till that time the fourth respondent shall be closed and electricity disconnected. Accordingly the application is partly allowed. There shall be no order as to cost.

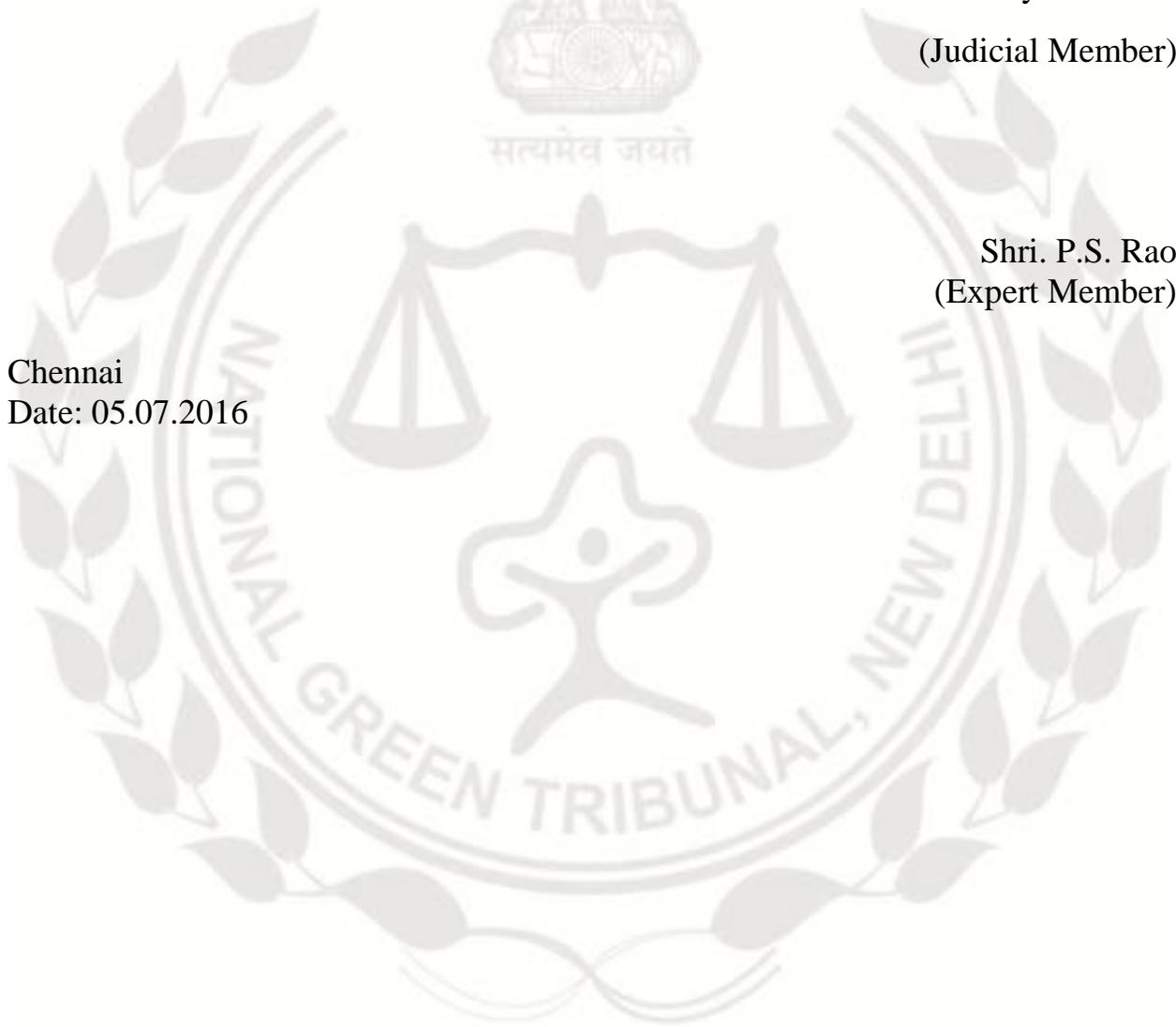


सत्यमेव जयते

Justice Dr. P. Jyothimani
(Judicial Member)

Shri. P.S. Rao
(Expert Member)

Chennai
Date: 05.07.2016



NGT