

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.5.2009

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI
AND
THE HON'BLE MRS.JUSTICE ARUNA JAGADEESAN

W.P.No.33882 of 2007

Madurai Coats Private Limited
Coats India, rep. by its
General Manager
Papavinasam Mills Post-627 042
Ambasamudram.

Petitioner

Vs.

1. The Appellate Authority
Tamil Nadu Pollution Control Board
NCB-1, Greenways Road
Chennai-600 028.
2. The Tamil Nadu Pollution Control Board
78, Anna Salai, Guindy
Chennai-600 032. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India
for issue of writ of Certiorari as stated herein.

For Petitioner : Mr.Sriram Panchu
Senior Counsel
for M/s.N.L.Rajah

For Respondents: Mr.R.Ramanlal (TNPCB)

ORDER
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P.JYOTHIMANI, J.

This writ petition is filed challenging the order dated 29.8.2007 of the first respondent/Appellate Authority under the Tamil Nadu Pollution Control Board, rejecting the appeal filed by the petitioner in Appeal No.55 of 2005 and confirming the order of the second respondent dated 28.6.2005.

2. Under the order of the second respondent dated 28.6.2005, the second respondent, who has earlier given consent order to the petitioner/Unit under Section 26 of the Water (Prevention and Control of Pollution) Act, 1974 (for brevity, "the Act"), having found, on inspection of the unit of the petitioner on 31.3.2005, that the unit has not taken action for segregation of high Total Dissolved Solids (TDS) dyebath effluent, has directed the unit to segregate the high TDS effluent and to provide Mechanical Evaporator within six months, stating that the consent is valid for the period ending 31.12.2005.

3. It was against the said order, the petitioner/Unit has filed an appeal before the first respondent under Section 28 of the Act, on the ground that the petitioner has been fully and consistently meeting all the parameters concerned in respect of effluent discharge as per the norms prescribed by the Tamil Nadu Pollution Control Board, apart from stating that at present the petitioner/Unit is running only Sewing Thread Plant and the Effluent Treatment Plant remains the same, which was granted originally for discharge of effluents up to 7623 KLD during the period till 2002, when both fabrics and thread processing were in operation, and that there is no water pollution caused by the petitioner. The said appeal filed in Appeal No.55 of 2005 was dismissed by the first respondent/ Appellate Authority, against which the present writ petition is filed.

4. The short facts leading to the filing of the writ petition are that the petitioner is a factory in Ambasamudram, Tirunelveli District. Initially, the petitioner was manufacturing cotton cloth, cloth synthetic and sewing thread. In the year 2002, the other units have been closed, except the integrated sewing thread factory. By an order dated 3.9.1997, the Pollution Control Board has given consent order subject to certain conditions, which includes that the Unit shall not carry out wet operations in the process in which trade effluent is generated; that no treated/untreated trade effluent or sewage shall gain access to Tamirabarani river either directly or indirectly; that as the treated trade effluent collected on certain dates did not satisfy the inland water standards, the petitioner was directed to furnish proposal for the improvement of the existing effluent treatment plant; and that the petitioner was directed to formulate proposals for alternate disposal of treated trade effluent instead of discharging the same into the Tamirabarani River.

5. It was against the said consent order dated 3.9.1997, the petitioner earlier approached the Appellate Authority, in which the Appellate Authority has passed an order on 18.4.1998, stating that if the water flow in River Tamirabarani is ten times or more

the quantity of treated effluent water discharged from the Unit, the Unit was permitted to discharge the effluent into the river, however, if the river flow is less than ten times, the quantity of treated effluent discharged by the unit should be let out in the channel, after obtaining permission from the Public Works Department authorities.

6. It appears that some individuals have filed writ petition in W.P.No.7410 of 1999 against the direction given to the petitioner to discharge effluent into River Tamirabarani through Kodaimelalgaiion Channel. The writ petition was disposed of on 11.9.2004, on the basis of the submission made by the learned counsel for the Tamil Nadu Pollution Control Board that the Board has been monitoring constantly to ensure that the treated trade effluent from the unit is not discharged into the River Tamirabarani either directly or indirectly, when there is no flow or when the flow is less than ten times the flow of effluent from the industry.

7. The writ petitioner has also approached the National Environmental and Engineering Research Institute (for brevity, "the NEERI") to evaluate the performance of the Effluent Treatment Plant. The NEERI, Nagpur, after detailed study, has given three suggestions to the petitioner/unit, namely:

- (i) segregation of high TDS effluent and evaporation of the same and the low TDS stream to be treated through Effluent Treatment Plant suitable modifications in the Existing Effluent Treatment Plant;
- (ii) treatment without segregation of high TDS effluent followed by Reverse Osmosis (R.O.); and
- (iii) same as alternative 2nd except that bio towers are not to be used and high power motors to be used in all three aeration tanks.

8. The petitioner/Unit has decided to accept the first option, as suggested by the NEERI, Nagpur, and furnished a proposal to the Board accordingly. However, the Board, finding that the discharge of treated trade effluent into water source should be avoided, requested the petitioner to furnish proposal for R.O. System.

9. In the said proposal, the petitioner/Unit has stated that they have closed the various activities of dyeing fabrics and finishing, etc., and was presently engaged only in the production of sewing thread, bleaching and mercerizing dyeing, and bleaching of interlining cloth, and therefore, the quantity of effluent has reduced from the consented 1382 KLD to 300 KLD in respect of

domestic sewage and from the consented 7693 KLD to 3500-4500 KLD in respect of trade effluent.

10. However, the Pollution Control Board, by its communication dated 24.9.2004, has informed the writ petitioner to implement R.O. System in order to reuse the effluent and thereby conserve the water source. That was again reiterated by the Pollution Control Board in the letter dated 28.12.2004, by requesting the petitioner to furnish the proposal for R.O. System, so as to ensure zero discharge of effluent.

11. It was thereafter the second respondent passed the impugned order on 28.6.2005, directing the petitioner/Unit to segregate the high TDS effluent and to provide mechanical evaporator within six months time, against which, the petitioner filed an appeal before the first respondent/ Appellate Authority. In the meantime, as per the direction of the Appellate Authority, the Anna University has studied the matter thoroughly and submitted a report in June, 2006.

12. The Appellate Authority, having referred to the report of the Anna University and found that the TDS in the treated effluent is within the standards fixed by the Board, as the Board has fixed 2100 mg/l, while the TDS in the treated effluent discharge from the petitioner's factory was found to be 1560 mg/l as per the report of the Anna University, and taking note of the fact that earlier the Board has directed the petitioner not to carry on wet operation in the process which generates trade effluent and that no treated/untreated sewage or trade effluent shall gain access to River Tamirabarani either directly or indirectly, by considering the question as to whether the Pollution Control Board is still entitled to impose a further condition under the impugned order for segregation of high TDS effluent and for providing a mechanical evaporator, again based on the report of the Anna University that even though the combined treated effluent is within the norms of 2100 mg/l, the maximum production of the petitioner Unit will release about 4585 kg of inorganic salts into the river every day and that for the average effluent discharge 3486 KLD, the TDS of effluent discharged varies in the range of 546 mg/l to 1412 mg/l, with the average being 1021 mg/l, resulting in discharge of 3559 kg of inorganic salts per day, and that avoidance or segregation of high TDS effluent streams and their treatment by evaporation can avoid the discharge of about 80% of these salts into River Tamirabarani, concluded that the Pollution Control Board is entitled to prescribe such additional conditions for the purpose of ensuring zero discharge system for achieving better standards. The Appellate Authority also found that under Section 17(1)(1)(ii) of the Act, the Board is empowered to vary any order to construct new systems for the disposal of trade

effluent and to adopt such remedial measures as are necessary to prevent, control or abate water pollution. The Appellate Authority has also relied upon Section 27(2) of the Act to hold that the Board can make any reasonable variation.

13. Mr.Sriram Panchu, learned Senior Counsel for the petitioner would submit that when on an earlier occasion the same Appellate Authority has passed order on 18.4.1998 permitting the petitioner/Unit to discharge effluent into River Tamirabarani if the water flow is ten times or more the quantity of treated effluent water discharged from the Unit, and in cases, where the river flow is less than ten times, the quantity of treated effluent discharged by the unit should be let out in the channel, after obtaining permission from the Public Works Department authorities, and the same has been confirmed by the Board in W.P.No.7410 of 1999 stating that the Board is watching that the said order of the Appellate Authority is fulfilled, there is no reason for the Board now to introduce a new suggestion to segregate the High TDS effluent and to provide a mechanical evaporator, under the impugned order.

14. According to the learned Senior Counsel for the petitioner, the Appellate Authority, having found that the TDS in the treated effluent is within the standards fixed by the Board, ought to have directed the Board not to impose any further condition. The learned Senior Counsel would submit that imposition of such further condition is only to prevent the petitioner/Unit from functioning at all.

15. The learned Senior Counsel would rely upon the judgments reported in Animal Feeds Diaries and Chemicals Limited v. Orissa State (Prevention and Control of Pollution) Board and Others, AIR 1995 Orissa 84, J.K.Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170, Indian Council for Enviro-Legal Action v. Union of India, [1996] 5 SCC 281, Style (Dress Land) v. Union Territory, Chandigarh, [1999] 7 SCC 89, apart from the judgment of the Supreme Court in Vellore Citizens Welfare Forum v. Union of India & Others, JT 1996 (7) SC 375=AIR 1996 SC 2715 and Hatsun Agro Product Ltd. v. State of Tamil Nadu, [2009] 1 MLJ 1131 to substantiate his contention that, on the factual matrix, the present situation in respect of the petitioner/Unit cannot be compared with the case of Noyyal River Ayacutdars Protection Association and Another v. The Government of Tamil Nadu & Others, 2007 (1) LW 275.

16. On the other hand, it is the contention of Mr.Ramanlal, learned counsel for the respondents, by referring to the various statements of the Anna University in its Expert's report, invited by the petitioner/Unit itself, that the Expert has found that

nearly four tons of chemicals have been let out in the River Tamirabarani. It is also his submission, as it is found in the report itself, that there is no permanent devise for the purpose of finding out the following of the directions of the Board, since temporary measures are always susceptible to manipulation. He would add that when large quantity of inorganic salt is let out into the river, the Pollution Control Board cannot be expected to remain silent.

17. He would refer to the sketch of the Anna University to show that the discharge is being done instead of referring to the upstream at Harvey Pool to the main river and he would submit that the danger involved in such conduct of the petitioner is not less and therefore, the finding of the Court in Noyyal River Ayacutdars Protection Association and Another v. The Government of Tamil Nadu & Others, 2007 (1) LW 275 is squarely applicable.

18. He would also submit that in the absence of any proper mechanism for the purpose of finding out the flow of water, whatever is stated by the petitioner is only by assumption and the Board, being the authority to maintain pollution free atmosphere, has every right to impose conditions. He would also rely upon the judgments in Vellore Citizens Welfare Forum v. Union of India & Others, JT 1996 (7) SC 375=AIR 1996 SC 2715 and Indian Council for Enviro-Legal Action v. Union of India, [1996] 5 SCC 281.

19. We have given our anxious thoughts to the submissions made by the learned counsel on both sides and also referred to the impugned order of the Appellate Authority, apart from the report of the NEERI and the expert report of the Anna University.

20. On fact, it may be true that the petitioner/Unit, which was carrying on the activities of Dyeing of Fabrics and Finishing, including the weaving, sizing activities, and was engaged in the production of Sewing Thread, has stopped the Benninger Bleaching Range, Chain Merceriser, Desizing Machine, Thermosal Dyeing Range, Pad Steamer dyeing, sizing and weaving activities and Dyeing of Fabrics and Finishing some time in June, 2002 and thereafter, the Unit has been carrying on production only in Sewing Thread, bleaching and mercerizing dyeing of 500 Tons per month and bleaching of interlining cloth of 7 Lakhs Metres per month.

21. As it is found by the Appellate Authority, it is also true that the TDS in the treated effluent discharged from the petitioner's Unit was found by the Anna University in its report in the year 2006 at 1560 mg/l, while the standard fixed by the Board itself is 2100 mg/l.

22. It is also true that the Appellate Authority, on 18.4.1998, has passed the following order:

"If the water flow in River Tamirabarani is ten times or more the quantity of treated effluent water discharged from M/s. Coats Viyella India Limited, the unit is permitted to let the discharged effluent into the river. If the water flow is less than ten times, the quantity of treated effluent discharged by the unit, the treated effluent should be let out in the channel after obtaining permission from the Public Works Department authorities."

23. Subsequently, in a writ petition filed by a third party against the above said direction of the Appellate Authority, the following directions were issued by this Court by order dated 11.9.2004:

"Mrs. Rita Chandrasekar, learned standing counsel for the Tamilnadu Pollution Control Board relying upon the report submitted that the Tamilnadu Pollution Control Board have been monitoring constantly to ensure that the treated trade effluent from the fourth respondents unit is not discharged into the river Tamirabarani either directly or indirectly when there is no flow or when the flow is less than 10 times the flow of effluent from the industry. In view of the said submission no further orders are required in this writ petition. The writ petition is dismissed. No costs. Consequently, WPMP No.10643/99 is also dismissed."

24. The very fact that that was only an interim arrangement is revealed by the conduct of the petitioner itself in approaching the NEERI in the year 1999 for evaluation of the existing effluent treated plant performance. It was at the instance of the petitioner, as enumerated above, the NEERI, Nagpur, in the year 1999, has suggested three options, out of which the petitioner has accepted to take up the first option of segregation of high TDS effluent and evaporation of the same and the low TDS stream to be treated through Effluent Treatment Plant suitable modifications in the Existing Effluent Treatment Plant. The complaint of the Board is that in spite of accepting the first option suggested by the NEERI, Nagpur, and deciding to upgrade the effluent treatment plant, the petitioner has taken no steps for the purpose of segregation of high TDS effluent and evaporation of the same. This fact is admitted by the petitioner, but its reasoning is that due to the reduction in the quantity of effluent from the

consented 7693 KLD to 3500-4500 KLD due to closure of the apparel factory in 2002, it is not necessary for them to go for segregation of high TDS effluent and evaporation of the same.

25. At this stage, it is relevant to refer to the report of the Anna University of June, 2006. The Anna University, in its report, has clearly found as follows:

"Even though the TDS of the combined treated effluent is within the norms of 2100 mg/l, the mass balance indicate that for the maximum expected production MCPL will release about 4585 kg of inorganic salts into the river every day. Further, for the average effluent discharge of 3486 KLD, the TDS of effluent discharged as monitored by TNPCB varies in the range of 546 mg/l to 1412 mg/l with the average being 1021 mg/l resulting in discharge of 3559 kg of inorganic salts per day. The avoidance or segregation of the high TDS effluent streams and their treatment by evaporation can avoid the discharge of about 80% of these salts into the river Tamiraparani."

26. This finding of the Anna University makes it very clear that the Anna University also wanted segregation of high TDS effluent streams and evaporation. This report of the Anna University, which is of the year June, 2006, is much after the closure of the various units of the petitioner, as stated above. When that is the finding of the Expert Body, it is of no use to contend that the Appellate Authority has earlier permitted to discharge effluents into River Tamirabarani if the flow of the water is ten times or more the quantity of treated effluent water discharged from the Unit.

27. In that regard, the Anna University, in its report of June, 2006, has stated as follows:

"The treated trade effluent from MCPL is discharged into river Tamiraparani, when the flow in the river is ten times (or more) than the quantity of trade effluent generated. In general, the water flow in the river Tamiraparani is reported to vary in the range of 50 to 400 times the quantity of treated effluents. This is based on the water discharge details from the upstream dam and as such there is no provision for measurement of flow in the river at the point of discharge of the effluents into the River Tamiraparani."

28. It is also stated in the report of the Anna University as follows:

"When the river flow is 10 times the effluent flow and the river water TDS is 100mg/l, the discharge of effluent with TDS of 2000 mg/l will increase the TDS in the river by 3 times i.e. to 300 mg/l. This will reduce to 139 mg/l at 50 times the river flow and 105 mg/l at 400 times river flow.

It is reported that if the flow in the river is less than 10 times the flow of trade effluent generated from the industry, the treated trade effluent is discharged into South Kodaimelalagan Channel (S.K.Channel) as ordered by the Appellate Authority dated 18.4.1998. It is understood that the SK Channel under such situation will only be carrying the effluents from MCPL and prolonged discharge of such effluents for irrigation will have adverse impacts in the long term."

Therefore, it is not merely the TDS discharge within the norms of 2100 mg/l, but also the other factors, which have been elicited by the Expert Body of the Anna University, which appear to have prompted the respondents to compel the petitioner/Unit to segregate the high TDS effluent and to provide mechanical evaporator.

29. On the face of it, there is absolutely no contradiction in the stand of the respondents, especially when the report of the Anna University is clear that there is no provision for measurement of flow in the river at the point of discharge of the effluents into the River Tamirabarani and that the continuous discharge, as ordered by the Appellate Authority in the order dated 18.4.1998, would only have adverse effect on the irrigation.

30. It is relevant to point out that as per the schematic diagram of water source and effluent disposal at MCPL, as depicted by the Anna University in its report, it is seen that the source of water to the petitioner Unit is Papanasam at the lower dam on the River Tamirabarani. The water drawn is stored in the natural reservoir, namely Harvey Pool and supplied to the unit through pipelines. The water is treated in the treatment plant before using for the purpose. In addition to that, the Unit is also having permission from Public Works Department to draw water to the tune of 1.6 cusecs from the South Kolaimelalagan Channel (S.K.Channel) of the Tamiraparani River. The effluent from the process units is treated in an Effluent Treatment Plant and the treated water is disposed back to river Tamiraparani or

S.K.Channel depending on the dilution available in the River. If the treated water is not contaminated, there is no reason for the petitioner Unit to have the water again circulated to Harvey Pool for further use.

31. In the Expert report, it is also stated that the Material Liquor Ratio (MLR) is adopted in manufacturing as follows:

"The MLR of 1:8 is used for all package dyeing whereas MLR of 1:20 is used for all hank dyeing operations.

The specific water consumption (311 L/kg) of the hank dyeing operation is very high as compared to the industry norms due to the high MLR of the machines. MCPL may take steps to minimize the water consumption for hank dyeing operations by using low MLR dyeing machines."

32. In respect of the Monitoring Device, the Anna University has reported as follows:

"The unit has no continuous TDS monitoring device to assess the TDS level in the treated effluent at the point of discharge. However, it is having portable TDS meters to assess the TDS level in the treated effluent and the TDS level so measured on daily basis are recorded in the Register maintained for that purpose.

It is advisable to have an online continuous TDS monitoring device to continuously monitor and record the TDS levels of the treated effluent to ensure that at no point in time, effluents exceeding the TDS limits are disposed into the river Tamiraparani."

33. The further observation of the Anna University in respect of installation of R.O. System with reject management, in fact, reiterates the first option of NEERI, Nagpur, which has not been implemented by the petitioner Unit. The observation of the Anna University is as follows:

"Thus it may not be environmentally beneficial for MCPL to install RO plant for the treatment of all effluent of 3500 to 4000 kLd. Instead MCPL may go for segregation of high TDS streams and manage the same by solar / mechanical evaporation as discussed in Section 21.0. This will further reduce the salt load discharge into the river by 80% even though the current discharge of effluent is within the discharge norm of 2100 mg/L."

34. In the light of the above technical finding of the Anna University, it is not possible to accept the contention of the learned Senior Counsel for the petitioner that the impugned order passed by the first respondent is without any basis.

35. The word "pollution" under the Act has a particular reference to "injurious to public health or safety", which is as follows:

"2 (e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms."

36. Likewise, Section 17 of the Act, which deals with the functions of the Pollution Control Board, enumerates in Section 17 (1) (1) as follows:

"17. FUNCTIONS OF STATE BOARD.-

(1) Subject to the provisions of this Act, the functions of a State Board shall be -

.....

(1) to make, vary or revoke any order -

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution."

Certainly, the said provision enables the Pollution Control Board, not only to make fresh order but also to change an order already made, apart from revoking the earlier order, the reason being that the Board takes into consideration the changing patterns in the

industrial activities, etc., in consonance with the avowed object of looking into the public health and hazard.

37. Section 25(4) of the Act enables the Board to grant consent subject to various conditions and also to refuse consent for reasons to be recorded in writing. It is apt to refer Sections 25(1) and 25(4) of the Act, which are as follows:

"25. RESTRICTIONS ON NEW OUTLETS AND NEW DISCHARGES.

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, -

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) being to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

.....
.....
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(4) The State Board may -

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being -

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person, establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing."

38. Section 27 of the Act enables the State Board to withdraw consent if the directions are not complied with:

"27. REFUSAL OR WITHDRAWAL OF CONSENT BY STATE BOARD.

(1) A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

(2) A State Board may from time to time review-

(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of revoking any such condition.

(b) the refusal of any consent referred to in sub-section (1) of section 25 or section 26 or the grant of such consent without any condition, any may make such order as it deems fit.

(3) Any condition imposed under section 25 or section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section."

39. The reason for which the Act was enacted is to prevent and control water pollution and to maintain or restore wholesomeness of water. In fact, the statement of objects and reasons, which prompted the law makers to pass the said Act, which was enacted as a special law in accordance with the powers under Articles 249 and 250 of the Constitution of India, based on the resolutions passed by the majority of the Houses of the Legislatures of the States, is as follows:

"The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and or use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy."

40. In the judgment referred to by the learned Senior Counsel for the petitioner rendered by the Division Bench of the Orissa High Court in Animal Feeds Diaries and Chemicals Limited v. Orissa State (Prevention and Control of Pollution) Board and Others, AIR 1995 Orissa 84, which relates to Air (Prevention and Control of Pollution) Act, it was held that under Section 31-A of the Air (Prevention and Control of Pollution) Act, the Board must be satisfied that the industry in question must emit air pollutant resulting in air pollution in the context of the definition of "air pollutant" under Section 2(a) of the Air Act, which means any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment and the definition of "air pollution" under Section 2

(b) of the Air Act means the presence in the atmosphere of any air pollutant and in that context, the Board must be satisfied about the air pollutant before invoking its powers under the Air (Prevention and Control of Pollution) Act.

41. Further, the judgment of the Supreme Court relied upon by the learned Senior Counsel for the petitioner in J.K.Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170, relates to Industrial Disputes Act, wherein it was held that when there is a conflict between the general and special laws, the special law will prevail.

42. The above said two judgments are not applicable to the facts and circumstances of the present case.

43. The learned Senior Counsel for the petitioner placed reliance on the order rendered by one of us (P.Jyothimani, J.) in Hatsun Agro Product Ltd. v. State of Tamil Nadu, [2009] 1 MLJ 1131. That was a case under the Prevention of Food Adulteration Act read with Essential Commodities Act in respect of milk products, based on Milk and Milk Products Order, 1992, wherein there is no prescribed procedure to check adulteration of food and it was in that regard, this Court has held that the law is well settled that the statutory authority must act within the four corners of the statutes, based on the English judgment in Taylor v. Taylor, [1875] 1 ChD 426. While sealing the blending unit there was no reason assigned and therefore, it was held that the same was not a reasonable restriction as per Article 19(1)(g) of the Constitution of India, as follows:

"63. It is well settled that a statutory authority must act within four corners of the statute as it was enunciated in the English case in Tailor v. Tailor [(1875) 1 ChD 426] and the same has been reiterated by the Apex Court with approval in Deewan Singh vs. Rajendra PD.Ardevi [(2007) 10 SCC 528] in the following words:

"40. A statutory authority, as is well known, must act within the four corners of the statute. Any action by a statutory authority contrary to or inconsistent with the provisions of the statute, thus, would be void. In the matter of construction of a statute, therefore, the court shall not take recourse to a principle which would render the acts of a statutory authority void in law."

Again the same has been followed by the Apex Court in the recent judgement in Karnataka State Financial Corporation vs. N.Narasimhaiah [(2008) 5 SCC 176]. While dealing with sections 29 and 31 of the State Financial Corporations Act, 1951, the Supreme Court, in that case, has reiterated the legal position as follows:

"15. A lender of money under the common law has the remedy to file a suit for realisation of the amount lent if the borrower does not repay the same. The Act, however, provides for a special remedy in favour of the financial corporation constituted thereunder enabling it to exercise a statutory power of either selling the property or take over the management or possession or both belonging to the industrial concern. Section 29, therefor, confers an extraordinary power upon the "corporation". It, being "State" within the meaning of Article 12 of the Constitution of India, is expected to exercise its statutory powers reasonably and bona fide.

16. Apart from the said constitutional restrictions, the statute does not put any embargo upon the corporation to exercise its power under Section 29 of the Act. Indisputably, the said provision was enacted by Parliament with a view to see that the dues of the corporation are realised expeditiously. When a statutory power is conferred, it is a trite law that the same must be exercised within the four corners of the statute. Power of a lender to realise the amount lent either by enforcing the charged and/or hypothecated or encumbrance created on certain property and/or proceeding simultaneously and/or independently against the surety/guarantor is a statutory right. Different statutes provides for different remedies. We may by way of example refer to Pawan Kumar Jain vs. Pradeshiya Industrial and Investment Corpn. of U.P. Ltd., where a statutory mandate has been given to realise the dues from sale of the mortgaged properties and then to sell other properties of the borrower. We are, however, not concerned with such a situation."

64. It is also relevant to point out that by the impugned order the blending unit of the petitioner was sealed and no reason was given, and in spite of lapse of nearly two months, nothing has been made known about the seized materials and the petitioner was not allowed to enter the sealed place of business. Even though it is true that the right to carry on business as enshrined under Article 19(1)(g) of the Constitution of India is subject to reasonable restrictions, such restrictions can be imposed by a validly passed order and the authority who enforces the same is expected to act within the four corners of the law, in the absence of which it can be termed as arbitrary and unfair. This Court is aware of the importance of the product about which the petitioner is concerned and if there is material to show that the petitioner has imported time-lapsed lactose and used the same for the purpose of producing milk products for human consumption, certainly, the same has to be viewed seriously as the same would be injurious to health. In spite of the seriousness of the same, it is unfortunate that the respondents have not been vigilant and they have not taken steps in the manner known to law. The respondents have in casual manner entered into the place of the petitioner and seized the materials which can only be treated as an emotional outburst and not as per law."

44. In *Vellore Citizens Welfare Forum v. Union of India & Others*, JT 1996 (7) SC 375=AIR 1996 SC 2715, the Supreme Court has held that the prevention of pollution and improvement of environment are Constitutional mandates and that has been enlarged by the Post-Constitutional statutes like the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986 and that the Precautionary Principle and Polluter Pays Principle are part of the Environmental Law of the country, apart from holding that even otherwise they are to be treated as a part of the customary International Law, which is to be treated as forming part of the domestic law:

"Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the

municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law. To support we may refer to Justice H.R. Khanna's opinion in Addl. Distt. Magistrate Jabalpur vs Shivakant Shukla (AIR 1976 SC 1207) Jolly George Varghese's case (AIR 1980 SC 470) and Gramophone Company's case (AIR 1984 SC 667)."

45. In M.C.Mehta v. Union of India, AIR 2004 SC 4016, it was asserted by the Supreme Court that protection of environment would have precedence over economic interest.

"The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in T.N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

46. The Division Bench of this Court in *Noyyal River Ayacutdars Protection Association and Another v. The Government of Tamil Nadu & Others*, 2007 (1) LW 275, while emphasizing the importance of safeguarding the forest wild life in the country, as enshrined under Article 48-A of the Constitution of India, and connecting it with the fundamental duty on every citizen to protect and improve the natural environment enunciated under Article 51-A(g) of the Constitution of India, held that the thread of right to life under Article 21 of the Constitution of India passes into the above-said celebrated principle of the Constitution of India and further held that the Pollution Control Board should not only ensure proper environment, but it is also its imperative duty to improve the environment.

"23. Article 48-A in Part-IV (Directive Principles) of the Indian Constitution enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wild life and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygenic atmosphere and ecological balance". It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygenic environment. The State, in particular, has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygenic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment, including their right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also an imperative duty to take adequate measures to promote, protect and improve the environment, man-made and natural."

47. The importance of such message against water and air pollution has again been reiterated by the Supreme Court in its recent judgment in U.P.Pollution Control Board v. Dr.Bhupendra Kumar Modi & Anr., [2009] 2 SCC 147 = 2009 (1) CTC 84, wherein His Lordship, P.Sathasivam,J., has made significant and thought provoking remark, as follows:

"20. In the case on hand which is also similar to Mohan Meakins Ltd. had commenced its journey in the year 1985, nonetheless lapse of such long period cannot be a reason to absolve the respondents from the trial. In a matter of this nature, particularly, when it affects public health if it is ultimately proved, courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all concerned persons whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts on the public health at large, should be dealt with strictly de hors to the technical objections. Since escalating pollution level of our environment affects on the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner."

48. Under similar circumstances, the Division Bench of this Court, in which one of us was a party (P.Jyothimani,J.), while dealing with tanneries in Erode District, in addition to the various categories of tanneries, namely:

- (a) Units now approached this Court stating that RO and RMS have been provided for the consented/applied capacity;
- (b) Units now making reduction of production capacity by removing process machines;
- (c) Units which are seeking time to install RO and RMS;
- (d) Units which have not applied for/applications not resubmitted;
- (e) Units willing to switch over for bleaching operation; and
- (f) Units which claim to have provided for a different technology like sprinkler system,

has given various directions regarding the operation of effluent treatment and R.O. Plants, as follows:

"18. In addition to the above, we issue the following directions:

- i) Units falling under Category I (i) to (iii) shall install electro magnetic flow meters, operate their Effluent Treatment and RO plants, recover water, properly manage reject and cease discharge to a water body/land and have their records maintained as directed by the Board and should undertake to satisfy the Board in this regard within a period of thirty days from today;
- ii) The TNPCB is directed to conduct similar enforcement action against similar clusters in Namakkal District where similar units are functioning on the other side of the Cauvery river and discharging untreated effluents into the river, especially as it is reported that the closure in Erode District tend to migrate across the river to Namakkal District. The TNPCB, Namakkal is directed to submit a status report within two months in respect of dyeing and bleaching units in Namakkal District, whose discharges reach river Cauvery and the action contemplated in respect of these units.
- iii) The TNPCB is directed to augment its engineer and staff strength at the Erode office by assigning five additional assistant engineers to the Erode office within four weeks and providing additional facilities such as vehicles, testing equipments such as hand held TDS meters, a dedicated telephone number to receive complaints, a complaints handling, follow up "feed back to complaint" procedure, etc. to ensure improved regulatory action. The TNPCB shall ensure that adequate publicity is given to its complaint handling procedure including the dedicated telephone number. We are informed that the Board has made recommendation for bifurcation of the office of the District Environmental Engineer at Kancheepuram, Tiruvallur and Erode by creating new posts and if the State Government approves the proposal, then it will be possible for the Board to provide additional staff and technical staff in the Erode District. The State Government is directed to take a decision in respect of the above proposal within four weeks.

iv) The Board shall ensure that adequate primary and secondary treatment (wherever required) is adopted by Tie & Dye and Printing Units to preserve and protect Kalingarayan Channel and Cauvery River water and action is taken to close these units as also bleaching units where discharge of untreated/unsatisfactorily treated effluent is noticed.

v) The TNPCB should cause review of chlorine use and storage procedures in the industrial sector and ensure that the best available technology is adopted for colour removal, and health of the communities is not put at risk due to adoption of low cost sub-standard solutions.

vi) The Public Works Department is directed to review all permissions granted for drawal of water from Cauvery (Kalingarayan Channel) to ensure that agricultural water supply is not misused/diverted for industrial purpose and to ensure that there is no effluent discharged using these pipelines and further ensure that there is reduction in water drawal by the industry, given the fact that the industry will be mandated to recycle the water it now consumes, consequent upon the achievement of "Zero Liquid Discharge".

vii) The Public Works Department is directed to examine the issue of remediating the water bodies and channels polluted by effluent flows and to recommend and adopt measures to keep these water bodies free from industrial pollution as well as domestic sewage from the settlements/local bodies who are presently discharging untreated/ unsatisfactorily treated sewage.

viii) The TNPCB should intensify its drive to identify units which are producing more than what is permitted in the order of consent, thereby discharging more than the quantitative limits prescribed in the consent and to take action to effect closure.

ix) The District Collector is directed to set up a Committee for co-ordinated action headed by the District Collector or his representative and comprising of the District Environmental Engineer, TNPCB, S.E., TNEB and the District Superintendent of

Police or his nominee, to ensure co-ordinated and continued action to arrest discharge to water bodies/land and to take stringent action against defaulting units, including criminal prosecution wherever warranted."

49. The Appellate Authority has, in fact, considered all these aspects threadbare and held that, if the Pollution Control Board insists for zero discharge system, it has power to do so and in such circumstances, it is not for this Court to interfere since pollution free India is the present constitutional goal, as it deals with the right to life of its citizens.

In these circumstances, the writ petition fails and the same is dismissed. No costs. Consequently, connected M.P.No.1 of 2007 is closed.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Appellate Authority
Tamil Nadu Pollution Control Board
NCB-1, Greenways Road
Chennai-600 028.
2. The Tamil Nadu Pollution Control Board
78, Anna Salai, Guindy, Chennai-600 032.
3. The District Collector, Tirunelveli.
4. The Chief Engineer, *मत्यमेव जयते*
Public Works Department (Irrigation)
Chennai.
5. The Secretary, Government of Tamil Nadu,
Public Works Department,
Secretariat, Chennai 9.
6. The Tamil Nadu Pollution Control Board,
Namakkal Division, Namakkal District.

MSM(CO)
SR/9.6.2009

W.P.No.33882 of 2007