

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-05-2009

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION No.29434 OF 2006

D.Saravanan

...

Petitioner

-VS-

- 1.The Union of India,
rep.by Secretary to Government,
Ministry of Environment and Forest,
6th Floor, CGO Complex, Paryavaran Bhavan,
Lodhi Road, New Delhi.
- 2.The Union of India,
rep.by the Secretary to Government,
Department of Science, Technology and Environment,
Union Territory of Pondicherry,
Pondicherry.
- 3.The Pondicherry Pollution Control Committee,
rep.by Member Secretary,
Secretariat, Pondicherry.
- 4.Chief Engineer,
Public Works Department,
Union Territory of Pondicherry,
Pondicherry.
- 5.Chief Town Planner,
Town and Country Planning,
Union Territory of Pondicherry,
Pondicherry.
- 6.Lakshmi Ammal Education Trust,
represented by Chairperson of the Trust (J.Anusuya),
Valudavur Main Road,
Agaram Village, Villianur Commune,
Pondicherry.

... Respondents

Petition under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, to call for the
records of the first respondent culminating in the impugned order
dated 27.07.2006 bearing Reference No.21-299/2006-IA, III, and to
quash the same.

For respondent 1 : Mr.P.Wilson,
Assistant Solicitor General.

For respondents 2 to 5 : Mr.T.Murugesan,
Senior Spl.Govt.Pleader
(Pondicherry).

For respondent 6 : Mr.N.R.Chandran,
Senior Counsel,
for M/s.Sathish Parasaran.

O R D E R

V.DHANAPALAN, J.

The order of the first respondent, dated 27.07.2006, granting Environmental Clearance to the sixth respondent for construction of Medical College-cum-Hospital, is under challenge in this Writ Petition, filed under Public Interest Litigation.

2. The case of the petitioner is as below :

2.1. Ousteri lake is an inter-state lake, of which 50% of the water spread lies in Pondicherry and the rest in Tamil Nadu. The said lake plays a crucial role in recharging the ground water aquifers and it also harbours rich flora and fauna. It is an important wintering ground for migratory birds and has been identified as one of the heritage sites by International Union for Conservation of Nature and ranked as one of the most important wetlands of Asia. It is a source of ground water recharge for wells in Pondicherry and Tamil Nadu. Apart from that, the lake is a source of irrigation for lands situated both in Pondicherry and Tamil Nadu through seven channels. The surface waters of the lake have also been identified by the Pondicherry Government as a source of drinking water supply for Pondicherry.

2.2. That being so, the sixth respondent intended to establish a Hospital-cum-Medical College adjacent to Ousteri lake and placed a proposal before the Pondicherry Pollution Committee. Initially, it was decided by the committee that permission could not be granted considering its location and large requirement of ground water and quantity of waste water generation. But, in spite of such rejection, the sixth respondent started construction. Thereafter, the same committee, without assigning any reason, directed the sixth respondent to conduct a public hearing and carry out the Environmental Impact Assessment Study. Accordingly, public hearing was conducted, but contrary to the Environmental Impact Assessment Notification (in short, "EIA Notification"), wherein objections were raised, but not considered.

2.3. Since the construction was going on without getting permission from Pondicherry Pollution Committee and clearance from the first respondent as per EIA Notification vide GO 60 (E), dated 27.07.2006, the sixth respondent filed Writ Petition No.12277 of 2007 seeking to restrain the sixth respondent from proceeding with the construction

and an interim injunction was granted and the said Writ Petition dismissed, following the issuance of Environmental Clearance Certificate, dated 27.07.2006, by the first respondent. Challenging the said Environmental Clearance Certificate, this Writ Petition has been filed.

3. Per contra, the case of the first respondent is as follows :

3.1. The project for construction of Medical College-cum-Hospital at Olvaikkal Revenue Village, Agaram, Villianur Commune, Pondicherry by M/s.Lakshmi Ammal Educational Trust, who is the sixth respondent herein, was forwarded by Pondicherry Pollution Control Committee, Department of Science, Technology and Environment, Government of Pondicherry, on 26.06.2006, vide letter No.2/PPCC/NOC/VCP/EE/2006/1582, dated 19.06.2006. The documents also included a No Objection Certificate, issued by the Member Secretary of the Pondicherry Pollution Control Committee vide letter No.PPCC/NOC/VCP/EE/2006/1580, dated 19.06.2006, and the minutes of the public hearing held on 05.06.2006 and the same were presented with an estimate of cost for the remedial scheme in accordance with statutory compliance and the first respondent, after a thorough study and appraisal by the Expert Committee, granted Environmental Clearance on 27.07.2006, subject to strict compliance of the conditions.

3.2. This Writ Petition is liable to be dismissed on the sole ground that the petitioner has not chosen to exhaust the alternative remedy of appeal available to him under Section 11 of National Environment Appellate Authority Act, 1997, under which the Central Government has established the National Environment Appellate Authority situated at New Delhi and the same is functioning as on today, disposing of the appeals. Also, this Writ Petition cannot be treated as PIL, as the petitioner himself participated in the hearing and objected for granting of Clearance.

4. The above stand of the first respondent is adopted by the other respondents as well.

5. The contention of the learned counsel for the petitioner is four fold viz.,

(1) the Writ Petition is very well maintainable and the petitioner need not approach the Appellate Authority under the National Environment Appellate Authority Act, 1997 ;

(2) the third respondent and the sixth respondent have not complied with the EIA Notification dated 27.01.1994 while conducting public hearing and pursuing the application before the first respondent ;

(3) the Pondicherry Pollution Control Committee has no power to review its own order and it has not considered the EIA Study

Report properly before granting NOC and

(4) the first respondent has not applied his mind while passing the impugned Clearance Certificate, dated 27.07.2006.

The learned counsel has relied upon the following authorities :

(i) A.P.Pollution Control Board II vs. Prof. M.V.Nayudu (Retd.) and others, 2001 (2) SCC 62 :

"45. The above reasoning given by us does not mean that exemption can be given to all industries within a particular radius of the reservoirs unmindful of the possible danger of pollution to the lakes. In fact, exemption granted even to a single major hazardous industry may itself be sufficient to make the water in the reservoirs totally unsafe for drinking water purposes. The Government could not pass such orders of exemption having dangerous potential, unmindful of the fate of lakhs of citizens of the twin cities to whom drinking water is supplied from these lakes. Such an order of exemption carelessly passed, ignoring the "precautionary principle", could be catastrophic.

46. Therefore, G.O.No.153 dated 03.07.1997 granting exemption must be held to be without statutory backing and also wholly arbitrary and violative of Article 21. Points 1 and 2 are decided against the 7th respondent.

47. In our earlier judgment in A.P.Pollution Control Board (1) vs. Prof. M.V.Nayudu, this Court had occasion to refer to the basis of the precautionary principle and to explain the basis and content of the very principle. This Court also explained the new principle of burden of proof.

48. Therefore, it was for the 7th respondent Industry to establish that there would be no danger of pollution to the two reservoirs even if the industry was established within 10km radius of the said reservoirs. In the present proceedings, the 7th respondent has failed to discharge the said onus.

49. Before the State Government, the industry produced no expert opinion except to say that it had got the new technology from the Indian Institute of Chemical Technology, Hyderabad (IICT) and it relied on a statement of Dr. Jayadhu, Chairman of the 7th respondent and formerly Director General of CSIR. The affidavit

of Dr.Santappa was produced only before the Appellate Authority under Section 28 of the Water Act, 1974. "

(ii) L.Krishnan vs. State of Tamil Nadu, Department of Revenue, 2005 (4) CTC 1 :

"12. Apart from the above we may also refer to Article 51-A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide Animal and Environment Legal Defence Fund vs. Union of India."

(iii) N.D.Jayal and another vs. Union of India and others, 2004 (9) SCC 362 :

"22. Before advertng to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizens' Welfare Forum vs. Union of India and in M.C.Mehta vs. Union of India, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. Maybe, in a different context, the right to development is also declared as a component of Article 21 in cases like Samatha vs. State of A.P. and in Madhu Kishwar vs. State of Bihar.

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to

development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, Development as Freedom, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. "

(iv) Karnataka Industrial Areas Development Board vs. C.Kenchappa and others, 2006 (6) SCC 371 :

"41. Experience of the recent past has brought to us the realisation of the deadly effects of development on the ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialisation, burning of fossil fuels and massive deforestation are leading to degradation of environment. Today the atmospheric level of carbondioxide, the principal source of global warming, is 26% higher than pre-industrial concentration.

42. The earth's surface reached its record level of warming in 1990. In fact, six of the seven warmest years on record have occurred since 1980, according to the World Watch Institute's 1992 Report. The rise in global temperature has also been confirmed by the Inter-Governmental Panel on Climate Change set up by the United Nations in its final report published in August 1990. The global warming has led to unprecedented rise in the sea level. Apart from melting of the polar ice it has led to inundation of low-lying coastal regions. Global warming is expected to profoundly affect species and ecosystem. Melting of polar ice and glaciers, thermal expansion of seas would cause worldwide flooding and unprecedented rise in the sea level if gas emissions continue at the present rate. Enormous amount of gases and chemicals emitted by the industrial plants and automobiles have led to depletion of ozone layers which serve as a shield to

protect life on the earth from the ultraviolet rays of the sun.

43. The dumping of hazardous and toxic wastes, both solid and liquid, released by the industrial plants is also the result of environmental degradation in our country.

44. The problem of "acid rain" which is caused mainly by the emissions of sulphur dioxide and nitrogen oxides from power stations and industrial installations is a graphic example of it. The ill-effects of acid rain can be found on vegetation, soil, marine resources, monuments as well as on humans. Air pollutants and acids generated by the industrial activities are now entering forests at an unprecedented scale."

(v) Indian Council for Enviro-Legal Action vs. Union of India and others, 1996 (5) SCC 281 :

"27. The present case also shows that having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with impunity. The coastal States and Union Territory administrations were required to prepare Management Plans within a period of one year from the date of the notification but this was not done. The Central Government was to approve the plans which were to be prepared but it did not appear to have reminded any of the coastal States or the Union Territory administrations that the plans had not been received by it. Clause 4 of the main Notification required the Central Government and the State Governments as well as Union Territory administrations to monitor and enforce the provisions of the main Notification, but no effective steps appear to have taken and this is what led to the filing of the present writ petition.

31. While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing

widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. "

(vi) Susetha vs. State of Tamil Nadu and others, 2006 (6) SCC 543 :

"19. The matter has also been considered in some detail by this court in Intellectuals Forum, wherein again while dealing with natural resources, it was opined:

"This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources." (emphasis supplied)

20. The court has not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasised was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

(vii) M.C.Mehta vs. Kamal Nath and others, 1997 (1) SCC 388:

"The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests,

parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures, the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

(viii) Intellectuals Forum, Tirupathi vs. State of A.P. & others, 2006 (2) CTC 71 :

"45. Therefore, under the present circumstances, the Court should do the most it can to safeguard the two tanks in question. However, due to the persistent developmental activities over a long time, much of the natural resources of the lakes has been lost, and considered irreparable. This, though regrettable, is beyond the power of this Court to rectify. One particular feature of this case was the competing nature of claims by both the parties on the present state of the two tanks and the feasibility of their revival. We thought that it would be best, therefore, if we place reliance on the findings of the expert committee appointed by us which has considered the factual situation and the feasibility of revival of the two tanks."

6. We have heard the learned counsel for the parties and also gone through the records.

7. The sole issue that arises for consideration in this Writ Petition is, whether the order impugned, namely, Environmental Clearance Certificate, issued by the first respondent to the sixth respondent for construction of Medical College-cum-Hospital at Olvaikkal Revenue Village, Agaram, Pondicherry, is bad in law ?

<https://hcservices.ecourts.gov.in/hcservices/> In this connection, it is more beneficial to extract the order impugned, in its entirety, which reads as under :

"No.21-299/2006-IA.III
Government of India
Ministry of Environment & Forests

Paryavaran Bhawan,
CGO Complex,
New Delhi-110003.
Dated :- 27th July, 2006.

Mr.J.Sandeep Anand
M/s.Sri Lakshmi Narayan Institute of Medical Science,
Ulvaikkal Revenue Village, Agaram,
Pondicherry-605014.

Sub : Environmental Clearance regarding - Medical College-cum-Hospital named M/s.Lakshmi Ammal Educational Trust at Ulvaikkal Revenue Village, Agaram, Pondicherry.

Sir,
"This has reference to Government of Pondicherry letter No.2/PPCC/NOC/VCP/EE/2006/1582, dated 19.06.2006, seeking prior environmental clearance for the above project under the EIA Notification, 1994. The above proposal has been appraised as per prescribed procedure on the basis of the mandatory documents enclosed with the application viz., the Questionnaire, EIA, EMP, Public Hearing proceedings furnished to the Expert Committee constituted by the competent authority in its meeting held on 7-8 July, 2006.

2.It is, interalia, noted that M/s.Sri Lakshmi Narayan Institute of Medical Science is proposing a Medical College-cum-Hospital at Ulvaikkal Revenue Village, Agaram, Pondicherry. The project consisting of 300 bedded hospital and intake 150 students per year. Total land area of the project is 26 acres & total built area is 24281 sq.m. Total water requirement is 195.75 m3/day (135 m3/day for hospital, 60.75 m3/day for college) and sewage generation is about 160 m3/day. Approximately 225 kg/day waste will be generated by the project. Govt.of Pondicherry (Department of Science & Technology & Environment) has issued NOC on 19.06.2006. Public Hearing was held on 20.02.2006. The total cost of the project is Rs.75 crores including of land cost of Rs.1 crores, construction cost Rs.13 crores and plant & machinery cost of 61 crores.

3. The Expert Committee after due considerations of the relevant documents submitted by the project proponent and additional observations furnished in response to its observations have accorded environmental clearance

as per the provisions of Environment Impact Assessment Notification-1994 and its subsequent amendments, subject to strict compliance of the terms and conditions as follows :

PART-A-SPECIFIC CONDITIONS

I. Construction Phase

i) All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.

ii) A First Aid Room will be provided in the project both during construction and operation of the project.

iii) Adequate drinking water and sanitary facilities should be provided for construction workers at the site. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.

iv) All the topsoil excavated during construction activities should be stored for use in horticulture/landscape development within the project site.

v) Disposal of muck, including excavated material during construction phase should not create any adverse effects on the neighbouring communities and should be disposed off taking necessary precautions for general safety and health aspects.

vi) The diesel generator sets to be used during construction phase should be enclosed type and should conform to E(P)A Rules prescribed for air and noise emission standards.

vii) Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate watercourses and the dump sites for such material must be secured so that they should not leach into the ground water.

viii) Regular supervision of the above and other measures should be in place all through the construction phase so as to avoid disturbance to the surroundings.

II. Operation Phase

i) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be

submitted to the Ministry before the project is commissioned for operation. Discharge of treated sewage if any shall conform to the norms & standards of the Govt. of Pondicherry (Department of Science, Technology & Environment).

ii) The solid waste generated should be properly collected & segregated before disposal to the City Municipal Facility. Wet garbage should be disposed by the vermiculture method.

iii) Any hazardous waste including biomedical waste should be disposed of as per applicable Rules & norms with necessary approvals of the Govt. of Pondicherry (Department of Science, Technology & Environment).

iv) Diesel generator sets proposed as back up power for lifts and common area illumination should be of enclosed type and conform to E(P)A Rules prescribed for air and noise emission standards as per CPCB guidelines. Exhausts should be raised to 4 meters above the rooftop.

v) The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety.

vi) Incremental pollution loads on the ambient air quality, noise and water quality should be periodically monitored after commissioning of the project.

vii) The project should regularly monitor ground levels and the ground water status.

viii) Application of solar energy should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. A hybrid system or fully solar system for a portion of the apartments should be provided.

ix) Measure should be taken to avoid any traffic congestion near the entry and exit points from the roads adjoining the proposed project site. All parking must be internalized.

x) The values of R & U for the building envelope should meet the requirements of the hot & humid climatic location. Details of the building envelope should be worked out.

xi) Suitable insulation material should be provided in the roof structure to reduce the U value to about 0.4 Watts per sq.m.per degree Centigrade.

xii) A Report on the energy conservation measures based on Bureau of Energy Efficiency norms should be prepared incorporating details about building materials & technology, R & U factors etc. and submit to the Ministry in three months time.

PART-B - GENERAL CONDITIONS

i) The environmental safeguards contained in the EIA Report should be implemented in letter and spirit.

ii) Provision should be made for the supply of kerosene or cooking gas/pressure cooker to the laborers during construction phase.

iii) All the laborers to be engaged for construction works should be screened for health and adequately treated before the issue of work permits

iv) Six monthly monitoring reports should be submitted to the Ministry and its Regional Office Bangalore.

4. Officials from the Regional Office of MOEF, Bangalore who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities, and documents/data by the project proponents during their inspection. A complete set of all the documents submitted to MOEF should be forwarded to the CCF, Regional Office of MOEF, Bangalore.

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.

6. The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.

7. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department (if required), CRZ Regulation, Forest (Conservation) Act, 1980 etc. shall be obtained by project proponents from the competent authorities.

8. The project proponent should advertise in at least two local newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded environmental clearance and copies of clearance letters are available with the Bangalore State Pollution Control Board and may also be seen on the website of the Ministry of Environment and Forests at <http://www.envfor.nic.in>. The advertisement should be made within 7 days from the day of issue of the clearance letter and a copy of the same should be forwarded to the Regional office of this Ministry at Bangalore.

9. These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 1994, including the amendments.

10. Further, it is added that the environmental clearance recommended to the project is subject to the specific condition that :

* The treated waste water must also be used for flushing of toilets.

* A green belt development plan must be submitted to the Ministry.

* The bio medical wastes must be handled and managed in compliance with BMW (M&H) Rules, 1998 & its amendments.

* The cost of environmental management plan and environmental monitoring scheme must be as part of the project budget and worked out details furnished to Ministry.

The same must be submitted to the Ministry within one month.

Sd/-

Dr.N.H.Hosabettu
Director (IA)"

9. A perusal of the above impugned order would clearly indicate that the proposal for construction of Medical College-cum-Hospital has been appraised by the first respondent, namely, Ministry of Environment & Forests, as per the prescribed procedure on the basis of the mandatory documents enclosed with the application viz., the Questionnaire, EIA, EMP, Public Hearing proceedings furnished to the Expert Committee constituted by the competent authority, pursuant to the request of the Government of

Pondicherry, for which No Objection Certificate was also issued by the Department of Science & Technology & Environment, Government of Pondicherry on 19.06.2006, following the public hearing on 20.02.2006. Besides, the Expert Committee, after due considerations of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations, has accorded environmental clearance as per the provisions of Environment Impact Assessment Notification-1994 and its subsequent amendments, subject to strict compliance of the terms and conditions, which include revocation of the environmental clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.

10. Adverting to the first contention of the learned counsel for the petitioner, it is to be stated that Section 11 of the National Environment Appellate Authority Act, 1997, specifically provides for an appeal remedy before the National Environment Appellate Authority against the orders issued by the Ministry of Environment & Forests, regarding Environmental Clearance, and the said Appellate Authority is very much functioning, which is evident from the letter produced by the learned Assistant Solicitor General from the Director (IA), Ministry of Environment & Forests, New Delhi, dated 25th October, 2006.

11. With regard to the second contention, it is seen that Notice of Hearing was given in newspaper, namely, DINA MALAR, on 18.01.2006, whereby public were called upon to send their opinion, appraisal, objections within 30 days from the date of Notice. It was also indicated therein that concerned individuals, environmental activists and organizations who are likely to be affected either directly or indirectly by the industrial plan may participate in the Public Hearing and depose orally or in writing their opinion before the Director, Department of Environment and the Member Secretary, Pondicherry Pollution Control Committee, III Floor, Housing Board Building, Anna Nagar, Nellithoppu, Pondicherry-5.

12. As for the third contention, it is to be stated that the project agency submitted Environment Impact Assessment and Management Plan, wherein it is mentioned that at least 73 m.cu./day of water can be obtained by meticulous rain water harvesting and, thereafter, the project was put up before the Expert Appraisal Committee in its 24th meeting held on 7th- 8th July, 2006 and the Committee, after examining the project in detail, recommended for issuance of Environmental Clearance, subject to strict compliance of the terms and conditions.

13. In view of the failure of the above three contentions, with regard to the fourth contention, it cannot also be said that the first respondent has not applied its mind while passing the impugned Clearance Certificate dated 27.07.2006.

14. Also, earlier, Writ Petition No.12277 of 2007 was filed by the petitioner, seeking to forbear the sixth respondent from proceeding with the construction and the said Writ Petition came to be dismissed, following the issuance of Environmental Clearance Certificate, which is impugned in this Writ Petition.

15. The present Writ Petition was admitted by a Division Bench of this Court, holding that it was not possible to accept the preliminary objection raised by Mr.Chandran that the petitioner should resort to the remedy of appeal under the Act. However, it was also held therein that the interim relief could not be continued inasmuch as the environment clearance had already been granted and Essentiality Certificate had also been issued to the sixth respondent and the medical college had started functioning.

16. Under the circumstances, we see no infirmity in the order impugned in this Writ Petition. Therefore, this Writ Petition is dismissed. No costs. Consequently, the connected M.P.Nos.1 to 3 of 2006 and 1 of 2008 are also dismissed.

17. However, it is open to the petitioner to approach the National Environment Appellate Authority to exhaust his appellate remedy against the order impugned in this Writ Petition, in which event this order will not stand in the way of the Appellate Authority in disposing of the appeal on merit.

Sd/-
Asst. Registrar

/ True Copy /

Sub.Asst Registrar

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To

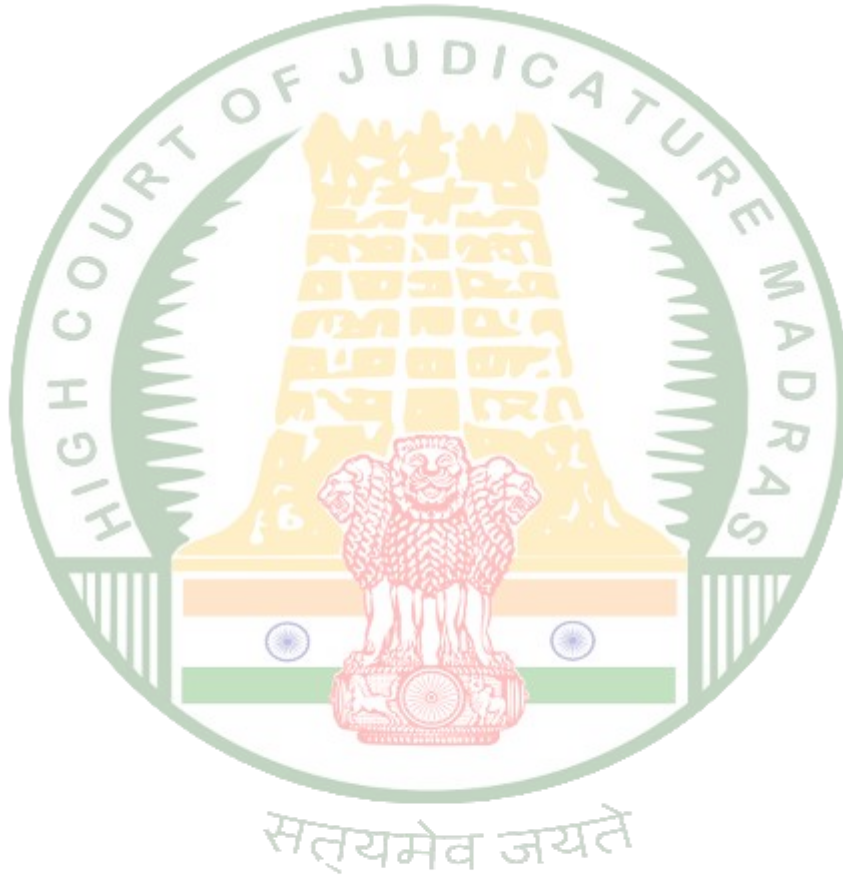
- 1.The Secretary to Government,
Union of India,
Ministry of Environment and Forest,
6th Floor, CGO Complex, Paryavaran Bhavan,
Lodhi Road, New Delhi.
- 2.The Secretary to Government,
Union of India,
Department of Science, Technology and Environment,
Union Territory of Pondicherry,
Pondicherry.
- 3.The Member Secretary,
The Pondicherry Pollution Control Committee,
Secretariat, Pondicherry.
- 4.The Chief Engineer,
Public Works Department,
Territory of Pondicherry,
Pondicherry.

5.The Chief Town Planner,
Town and Country Planning,
Union Territory of Pondicherry,
Pondicherry.

- + 1 CC to M/s.Satish Parasaran,Advocate,SR.20765
- + 1 CC to Senior Government Pleader cum
Senior Public Prosecutor for Pondicherry,SR.20766

W.P.No.29434 OF 2006

MG (CO)
EM/27.5



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