

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

Appeal Nos. 98-101, 105-113 and 156-158 of 2013 (SZ)

In the matter of:

1. M/s. Divya Granites
Sy.No. 55/1, Byndhahalli
Kadabagere Post
Bangalore North Taluk
Bangalore.
Rep. by its Proprietor
Sri. Shanta
W/o Nagaraju .. Appellant in Appeal No.98 of 2013(SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/54 dated 29.07.2013 of the Karnataka State Pollution Control Board)

2. M/s. Maruthi Packaging Industries
Sy.No. 55/2, Byndhahalli
Kadabagere Post
Bangalore North Taluk
Bangalore. .. Appellant in Appeal No. 99 of 2013(SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/44 dated 29.07.2013 of the Karnataka State Pollution Control Board)

3. M/s. Sree Maruthi Granites
Sy.No. 55/1, Byndhahalli
Kadabagere Post
Bangalore North Taluk
Bangalore. .. Appellant in Appeal No. 100 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/55 dated 29.07.2013 of the Karnataka State Pollution Control Board)

4. M/s. Sree Byraveshwara Granites
Sy.No.55/2, Byndhahalli
Kadabagare Post
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 101 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/53 dated 29.07.2013 of the Karnataka State Pollution Control Board)

5. M/s. Rajashree Rocks
Sy. No. 152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 105 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/61 dated 29.07.2013 of the Karnataka State Pollution Control Board)

6. M/s. Navarathna Granites
Sy.No. 152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 106 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/62 dated 29.07.2013 of the Karnataka State Pollution Control Board)

7. M/s. Matheswari Granites
Sy.No.152, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 107 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/60 dated 29.07.2013 of the Karnataka State Pollution Control Board)

8. M/s. Lakshmi Narasimha Granites
Sy.No.152, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 108 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/65 dated 29.07.2013 of the Karnataka State Pollution Control Board)

9. M/s. Shree Sakthi Enterprises
Sy.No.152, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 109 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/59 dated 29.07.2013 of the Karnataka State Pollution Control Board)

10. M/s. Shree Ohm Shakthi Granitess
Sy.No.152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 110 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/64 dated 29.07.2013 of the Karnataka State Pollution Control Board)

11. M/s. Vinayaka Granites
Sy.No.152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 111 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/63 dated 29.07.2013 of the Karnataka State Pollution Control Board)

12. M/s. Shree Srinivasa Granites
Sy.No.152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 112 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/58 dated 29.07.2013 of the Karnataka State Pollution Control Board)

13. M/s. Shree Balaji Granites
Sy.No.152/2, Kadabagare village
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 113 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/66 dated 29.07.2013 of the Karnataka State Pollution Control Board)

14. M/s. Shree Ganesha Granites
Sy.No.55/1, Byndhahalli village
Kadabagare post
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 156 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/52 dated 29.07.2013 of the Karnataka State Pollution Control Board)

15. M/s. Shree Sapthagiri Granites
Sy.No. 43/1, Byndhahalli village
Kadabagare post
Bangalore North Taluk
Bangalore

.. Appellant in Appeal No. 157 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/50 dated 29.07.2013 of the Karnataka State Pollution Control Board)

16. M/s. Shree Manjunatha Swamy Granites
Sy.No. 51/2, Byndhahalli village
Kadabagare post
Bangalore North Taluk
Bangalore.

.. Appellant in Appeal No. 158 of 2013 (SZ)

(Challenging the order No. KSPCB/CEO-2/TGRCA/2013-14/57 dated 29.07.2013 of
the Karnataka State Pollution Control Board)

- versus-

The Karnataka State Pollution Control Board
No. 49. ' Parisara Bhavan'
Church Street
Bangalore.
Rep. by its Chairman

.. Sole Respondent in all the appeals

Counsel appearing for the appellants: M/s. Manikandan, Vijayalakshmi, Abhishek Mali
Patil, and Shahul Hameed, Advocates.

Counsel appearing for the respondent: Shri D. Nagaraja, Advocate.

JUDGMENT

Present:

1. Hon'ble Shri Justice M. Chockalingam,
Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran,
Expert Member

Date: 6th December 2013

(Hon'ble Justice Shri M. Chockalingam, Judicial Member)

These appeals have been filed by the appellants herein challenging the order passed by the respondent, Karnataka State Pollution Control Board (for short ' Board') in each of the proceedings in the appeals referred to above dated 29.07.2013, whereby closure directions were issued to the appellants' units which are engaged in the granite cutting and polishing activities in Byndahalli, and Kadabagare villages in Bangalore North under section 33 (A) of Water (Prevention and control of Pollution) Act, 1974 and rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction Business) Rules and the Water (Prevention and Control of Pollution) Rules, 1976.

2. The case of the appellants in these appeals in brief is as follows:

3. The appellants are running granite industries situated in Byndahalli and Kadabagare villages, in Bangalore North Taluk in the State of Karnataka and are engaged in granite cutting and polishing activities and the said process involves cutting of large blocks of stone into thin slabs. The thin slabs are then polished. The appellants have employed one machine for cutting of the blocks into slabs and another machine to polish the slabs. The appellants have obtained necessary permission and general license from Dasanapuram Gram Panchayat and also obtained Value Added Tax Certificate from the Department of Commercial Tax. The Bangalore Electric Supply Company Ltd., (for short 'BESCOM') has provided the electric power supply connection to the units of the appellants to operate the unit. The said process does not involve any air pollution and water pollution. The said unit is located at a distance of over 1 km from the Arkavathi river bank. The respondent had granted consent for operation under the Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act') as per the

order dated 23.03.2013. The consent for discharge of effluents under Water Act was granted on 23.03.2103 valid till 30.09.2013 subject to conditions in respect of appellants in Appeal Nos. 98-101 of 2013 (SZ)

4. The appellants have further averred that the units run by the appellants have set up water recycling unit wherein the water used for the industrial process is completely recycled. At the end of the recycling process, the granite sludge/effluent is stored in a septic tank which is later transported to the common disposal site as specified by the respondent at Sy.No. 2 Karigiripura, Tavarekere Hobli, Bangalore South Taluk, Bangalore. The appellants have not violated any conditions imposed by the Board and there were no allegations made by the public and no inspection is caused by the Board alleging pollution being caused by the appellants.

5. When the matter stood thus, the Board, based on the Government Notification No. FEE 215 ENV 2000 dated 18.11.2003 and the Government order dated 12.01.2004 issued under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 of the Government of Karnataka (for short 'Government') chose to issue closure directions to the appellants' industries on the ground that the appellants' industries are located within 1 km from Arkavathi river bank, i.e., Zone-3 as per the Government Notification dated 18.11.2003, where no industrial activity is permitted. The appellants' industries do not fall within Zone-3 as per the Government Notification dated 18.11.2003. It can be seen that the respondent having examined the same had granted the appellants necessary permission to operate the industries as per the consent order dated 23.03.2013 which implies that the appellants' industries do not all within Zone-3, where industrial activity is prohibited. The appellants have further stated that opportunity of being heard was not granted to them and no enquiry was conducted by the respondent/Board alleging pollution caused by the appellant's units. No enquiry/inspection was caused by the respondent to hold that the appellants' industries are located within in 1 km from the Arkavathi river bank. According to the appellants, Zone-3 is the area covered within 1 km distance from the river banks of Arkavathy only up to Hesaraghatta tank from Tippagondahalli Reservoir

(for short 'TGR') and Kumudavathi river and whereas, the appellants' industries are situate at a distance of over 1 km from the river banks of Arkavathy and Kumudavathi rivers. Hence, the appellants hold that their industries are not situate within Zone-3. When the facts stood thus, the respondent/Board acting on the above Government order has passed the impugned orders dated 29.07.2013 directing the appellants to close their industries. Hence, the necessity arose to prefer these appeals before the Tribunal.

6. The respondent/Board, *per contra*, in the reply has stated as follows:

7. The impugned orders were passed on 29.07.2013 and on 2nd September 2013, the BESCOM officials have disconnected the power supply to the appellants' industries pursuant to the directions issued by the Board. By suppressing this material fact, the appellants have preferred the appeals herein. The closure directions were issued in the wake of the Notification dated 18.11.2003 issued by the Government of Karnataka. There was a statutory direction issued by the Government to the respondent/Board not to issue consent in Zone-3. However, the officer-in-charge of the area had issued the consents to the Applicants in Appeal Nos. 98-101/2013 (SZ), which were illegal and would not confer any right to carry on industrial operation in violation of the said directions. Further, the industries have not obtained consent for establishment while establishing the industries. Even in the case of the said three appellants whose industries have been granted consent by the Board, the period of validity came to an end on 30.09.2013.

8. It is further stated in the reply of the respondent/Board that the lands in Byandahalli and Kadabagare villages, in Bangalore North Taluk, where the appellants have established the industries fall in Zone-3 as per the Notification dated 18.11.2003. Therefore, the contention of the appellants that their industries are located beyond 1 km away is absolutely incorrect and false. Under such circumstances, particularly when the activity itself is prohibited, the appellants cannot run the same in violation of law. Further, while seeking interim order, the appellants have suppressed the material fact that their

industries are as if situated beyond 1 km and also suppressed/misled the fact of disconnection of power supply on 2nd September, 2013 itself.

9. The only question that would arise for consideration in all the appeals is whether the impugned orders of closure issued to the industries of the appellants in the present appeals are to be set aside for all any of the reasons putforth by the appellants and whether the consequential directions to BESCO is also liable to be set aside.

10. Advancing the arguments on behalf of the appellants, the learned counsel for the appellants would submit that the units of the appellants are granite cutting and polishing units and one card board cutting unit which do not require consent for operation either under Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act') or Air (Prevention and Control of Pollution) Act, 1981 (for short 'Air Act').and though 3 of the units obtained consent from the Board, the same was not necessary since none of them is causing air or water pollution, that the said orders of the closure were passed by the authority without giving any opportunity of being heard and that consequential electric power disconnection was also illegal. The appellants have set up water recycling units wherein water used for the industrial process is completely recycled and at the end of recycling process, the granite sludge/ the effluent is stored in the septic tank, dried and transported to a common disposal site as specified by the respondent/Board. Thus, the process followed by the appellants/industries did not cause any pollution to water or air. The appellants have not violated any environmental law. No allegation was made against the appellants/industries by general public at any point of time. No inspection was caused by the Board on the ground of pollution being caused by the appellants. By the orders of closure, number of workers, who were employed, have lost their jobs. The respondent/Board has relied on the Government Notification No. FEE 215 ENV 2000 dated 18.11.2003 and Government Order dated 12.01.2004 issued under section 18(1) (b) of the Water Act and Air Act, respectively on the ground that the industries of the appellants are located within 1 km radius from the banks of the confluence of Rivers Arkavathi and Kumudhavathi (for short ' rivers') in which Tippagondahalli Reservoir (for short ' TGR') has been built which has been the source of drinking water to the city of

Bangalore and surrounding areas since 1930 which is shown as Zone-3 as per the Government Notification dated 18.11.2003, where industrial activities are prohibited. Questioning the *vires* of the Government order dated 12.01.2004, the learned counsel would contend that the said Government order was absolutely illegal since the plan laws cannot be directed to be implemented by the Board and that too by denying consent under a statute meant for industries. Even as per the Notification of the Government order, the Board was not an authority prescribed for implementation of the plan regulation. A statute provides for grant or refusal of consent and the Air and Water Acts cannot be repealed by an executive order. A direction for blanket refusal of consent for violation of plan laws can only be a direction to enforce the planning law and not pollution laws. The Notification was based on an aerial survey of the Indian Space Research Organisation (ISRO) conducted in the year 2000 and has no relevance in the year 2013, when settlements have grown by indiscriminately granting approval by the planning authorities. The zonal classification was arbitrary. The Government of Karnataka has constructed thousands of houses in the area in question under the housing scheme for the poor and also a bus depot along with quarters for the staff of Karnataka State Road Transport Corporation. It is pertinent to point out that though the closure orders were given as if the industries of the appellants fall within Zone-3, the respondent/Board has granted permission to operate the industries to 3 of the appellants who have filed appeals in Appeal Nos. 98-101 of 2013 (SZ) to carry on the industries and the same was being satisfied that the industries of the appellants were outside Zone-3. The appellants were never given the opportunity of being heard as contemplated under Section 21 of the Water Act. A reading of the impugned orders would clearly indicate that they were not speaking orders and did not contain cogent reasons. The impugned orders were passed without application of mind. Before passing the orders of closure, neither an inspection was made nor any notice was given, nor has the Board measured the pollution level inside and outside the industries of the appellants. The respondents have caused a gross violation of the principles of natural justice, since the appellants were not given an opportunity of being heard to put forth their stand while passing the orders and thus, all orders of closure and consequential direction for disconnection of electric energy are

bad, illegal, arbitrary and without application of mind and hence, all the impugned orders have got to be set aside with permission to the appellants to run the units.

11. Countering the above contentions with vigour and vehemence the counsel for the respondent/Board would submit that all the closure orders given to the appellants to close their units were in accordance with law. All the contentions put forth by the appellants are meritless. The appeals in Appeal Nos. 105-113, 156-158 of 2013 (SZ) have never obtained consent either to establish or operate which are mandatory under the Water and Air Acts, while the period covered by the consent in respect of the appellants in Appeal Nos. 98-101 of 2013 (SZ) came to an end on 30.09.2013 and they were not renewed. It is pertinent to point out that the appellants in Appeal Nos. 98-101 of 2013 (SZ) obtained the consent by misrepresentation of facts and that can be termed as illegally obtained. The Government of Karnataka, in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986 issued a Notification classifying the entire TGR catchment area into 4 zones specifying the nature of activities in the said zones. The Board has also prepared a map as found in Annexure-R3 wherein Zone 3 specified the distance factor as 1 km from the river bank and the industries of all the appellants have been established within the radius of 1 km from the river bank and many of them even without obtaining consent for establishment. Some of the appellants filed affidavits stating their industries are located in Zone-1 of TGR catchment area Notification. On such information, consent was given on 30.09.2013, while the industries of the appellants are located within Zone-3. The contentions of the appellants that their industries are located beyond 1 km from the river bank is factually not correct and thus, the directions issued by the respondent/Board for closure of the industries on that ground was correct. Even assuming that some of the industries of the appellants are located beyond 1 km, the granite cutting units cannot be allowed to operate in Zone-4, since the granite cutting units are classified under Orange Category and only Green Categorized industries can be permitted in Zone-4 and not the industries falling under Orange Category.

12. The learned counsel would further add that the contentions put forth by the appellants' side in respect of validity of the Notification have to be rejected in view of the decision of the Hon'ble High Court of Karnataka made in W.P.No. 38162/2009 decided on 06.06.2011 which was also affirmed in W.P.No. 15928/2010. While issuing the Notification dated 18.11.2003 and the Government order dated 12.01.2004, the Government of Karnataka has taken a policy decision to protect and prevent any contamination of water in the TGR keeping in view the Principles of Sustainable Development and Precautionary Principle. Pointing to Section 25 of Water Act, the counsel would submit that no person shall establish or take any steps to establish, operation or process or any treatment and disposal system which is likely to discharge sewage or trade effluent without the consent of the State Board. In the instant case, many of the appellants were carrying on with the industries without consent either to establish or operate and some of them were carrying on by obtaining consent from misrepresentation and the period covered by the consent in their cases was also over. Any contravention of the provisions of Section 25 of the Water Act is punishable under Section 44 of the same Act. Answering the contention that no show cause notice was given nor any inspection was made before issuing the directions for closure of the units, the counsel would submit that under sub rule (6) of rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control of Pollution) Rules, 1976 as amended with effect from 23.12.1983, the Board was of the opinion that in view of likelihood of grave injury to the environment, it was not expedient to provide an opportunity to file objections against the proposed direction, the Board can issue direction, since all the appellants have established and were operating the industries illegally even without consent, it was not open for them to claim any hearing and as violators of law, they could not ask for equity. All the appellants by operating their industries illegally were causing pollution of water in the TGR catchment area and under such circumstances, the directions for closure of the units of the appellants were given which are to be sustained and hence, all the appeals have got to be dismissed.

13. The Tribunal paid its anxious consideration on the submissions made and looked into all the available materials.

14. All these appeals concentrate on challenging the orders dated 29.07.2013 passed by the respondent/Board directing the industries of the appellants to close the operations and process forthwith and further direction to the Bengaluru Electric Supply Company Limited (for short ' BESCO'), Bengaluru to terminate the electric power supply to the industries of the appellants. The industries of the appellants were engaged in granite cutting and polishing activities. Admittedly, only 3 of them obtained consent and remaining 13 units did not obtain consent either to establish or operate. Even in the case of the 3 units, who obtained consent to establish, these consents were valid till 30.09.2013 and these 3 units also operated without renewal of the consent. Thus, it is an admitted position that as on the date of impugned closure order served upon the appellants, all the appellants were carrying on without consent to establish or consent to operate.

15. Section 25 of the Water Act, makes obtaining of consent for operation of the industry mandatory. Section 25 of the Water Act reads 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 an 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) ****

*(c) ****

The words employed in the above provision “establish or take any steps to establish any industry” were interpreted by Hon’ble Supreme court of India in Andhra Pradesh Pollution Control Board Vs. B.V. Naidu reported in 2001(2)SCC 62 as follows:

“Point 4:

This point deals with the principle of promissory estoppel applied by the appellate authority, on the ground that once building permission and permission for change of land use were granted, the appellant Board could not refuse NOC. The learned Additional Solicitor General, Sri R.N. Trivedi referred to the amendment to Section 25(1) in this connection. Under Section 25 (1) of the Water (Prevention and Control of Pollution) Act, 1974 as it original stood, sub-section (1) thereof read as follows: "Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well". By Central Act 53/1988, the sub-section was amended and reads as follows:

"Section 25(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) bring to make any new discharge or sewage....." After the amendment, the prohibition now extends even to 'establishment' of the industry of taking of steps for that process and therefore before consent of the Pollution Board is obtained, neither can the industry be established nor any steps can be taken to establish it. The learned Additional Solicitor General of India, Sri Trivedi is right in contending that the 7th respondent industry ought not to have taken steps to obtain approval of plans by the Gram Panchayat, nor for conversion of land use by the Collector, nor should it have proceeded with civil work in a installation of machinery. The action of the industry being contrary to the provisions of the Act, no equities can be claimed. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute. The industry could not therefore seek an NOC after violating the policy decision of the Government. Point 4 is decided against the 7th respondent accordingly.

The very reading of the judgment of the Apex Court would make it clear that the consent of the Pollution Control Board of the State is a condition precedent for establishment of an industry or for taking any steps for establishment. Thus, it can well be stated that all the appellants, were carrying on their units illegally, since they were

operating the units without the consent of the Board. The contention by the appellants' side that they have obtained necessary license from the local panchayat authorities cannot in any way confer any right on the appellants either to establish or operate their units in the absence of requisite consent under the Water Act and Air Act.

16. A perusal of the directions for closure of the industries of the appellants which are under challenge would indicate that they were issued under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control of Pollution) Rules, 1976 and in violation of FEE 215 ENV 2000 dated 18.11.2003 issued to protect the TGR catchment area and also Government order dated 12.01.2004. From the materials made available by the respondents it could be seen that pursuant to a meeting held on 08.07.2003, in which a resolution was passed to protect the ecologically sensitive area as a quantum and quality of water supply from the TGR has direct impact on larger population of Bangalore and necessity to protect the catchment area of TGR by preventing any activity that would lead to contamination of the reservoir. The Government of Karnataka in exercise of powers under Section 5 of the Environment (Protection) Act, 1986, has issued a Notification whereby the entire TGR catchment area was classified into 4 zones specifying the nature activities in each zone. The said Notification dated 18.11.2003 and a map prepared by the Board are produced as Annexure-R2 and R3. From the Annexure-R2 and R3 it could be seen that Zone-3 is within 1 km radius from the river bank. It was so decided to protect the water from contamination and not to accord any consent to any industry within Zone-3.

17. The respondent/Board issued all the impugned orders in view of the violations of the said Notification dated 18.11.2003 and the Government order dated 12.01.2004 issued under Section 18(1)(b) of the Water Act and Air Act. The learned counsel appearing for the appellants assailed both the Notification and the Government order on different grounds as stated above. A Division Bench of the Hon'ble High Court

of Karnataka had an occasion to consider the validity of the Notification dated 18.11.2003 in W.P .No. 38162/2009. In its judgment dated 06.06.2011 it has held as follows:

“From a perusal of the aforesaid provisions, we are satisfied that the Notification issued by the State Government dated 18.11.2003 (Annexure-A1) flows from the power vested in the State Government under the aforesaid statutory provisions. It is, therefore, apparent, that the measures of the kind, which has taken by the State Government in its notification dated 18.11.2003 (Annexure-I) was permissible under Section 3, and as such, relevant directions in respect thereof could certainly have been issued under Section 5 of the Environment (Protection) Act, 1986. In view of the above, we are satisfied that there was absolutely no infirmity in the notification issued by the State Government on 18.11.2003.”

18. From the very reading of the judgment, it is abundantly clear that the notification issued by the State of Karnataka dated 18.11.2003 was permissible under Section 3 of the Environmental (Protection) Act and as such the directions issued thereof could certainly have been issued under Section 3 of the Environmental (Protection) Act, 1986 and the Bench has also pointed out that there was absolutely no infirmity in the said Notification. The said view was again affirmed by the order of the another Bench of the Hon'ble High Court of Karnataka made in W.P. No. 15928/2010 dated 19.10.2011.

19. In view of the above decisions of the Hon'ble High Court of Karnataka, the contentions putforth by the learned counsel for the appellants in this regard have to be rejected. In so far as the contention that before passing the impugned orders neither any inspection was made nor any show cause notice was given, but a drastic orders of closure of the units were given along with direction to the BESCO to severe electric connections were made and thus, it was a flagrant violation of

principles of natural justice, cannot be countenanced for the simple reason that all the units of the appellants were carrying on the operations in the units without consent to establish or consent to operate and thus, their activities could be termed as illegal. Apart from that, even the closure directions were issued under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control of Pollution) Rules, 1976. The Sub Rule (6) of Rule 34 of the Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control of Pollution) Rules, 1976 states as follows:

“ In a case where the State Board is of the opinion that in view of the likelihood of grave injury to the environment, it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for the reasons to be recorded in writing, issue directions without providing such an opportunity.”

17. Paragraph 4 of the impugned orders reads as follows:

“ Though before issuing direction under Section 33-A of the Water(Prevention and Control of) Pollution Act, 1974, the Board is required to issue notice of proposed directions, in view of the sensitiveness of the area and also keeping in view the larger interest of the public who are depending for their drinking water from Thippagondanahalli Reservoir, and further, the area where you are operating the industry falls within the catchment area of the said Reservoir, notice of issuance of proposed direction is dispensed with.”

18. In the instant case, the appellants who have been carrying on their units in violation of law without consent to establish or consent to operate cannot be allowed to state they were not given opportunity of being heard before the issuance of closure orders and the respondent/Board was justified in issuing the directions for closure in view of the larger interest of the society who are depending for the drinking water from the reservoir in question and the injury likely to be caused by the industries of the appellants.

20. Yet another contention raised by the appellants' side that all the units of the appellants are not situate in Zone-3 (i.e., 1 km from the river bank) and part of them are beyond the said Zone is satisfactorily answered by the respondent/Board. Even assuming the units of the appellants are situate beyond 1 km radius in Zone-4, the granite cutting and polishing units cannot be allowed to operate in Zone-4, since they are classified as Orange Category units and not categorized under Green industries., which alone can be permitted in Zone-4.

21. Thus, all the contentions putforth by the appellants do not merit acceptance and hence, they are liable to be rejected and accordingly rejected. The Tribunal is unable to notice any infirmity in the impugned directions issued by the respondent/Board for the closure of the appellants' units.

22. Hence, all the appeals are dismissed.

23. Since all the main appeals are dismissed, the miscellaneous applications filed by the appellants pending the appeals are also dismissed.

24. Pursuant to the orders of closure issued by the respondent/Board, all the appellants have stopped the operation of their units. Though the units are not in operation, it is an admitted fact that all the machinery and materials used by the appellants and are kept within the premises have to be removed by the appellants for

which reasonable time has to be given to them. The appellants are directed to remove all the machinery and materials along with the construction made by them for carrying on the activities within a period of 3 months herefrom.

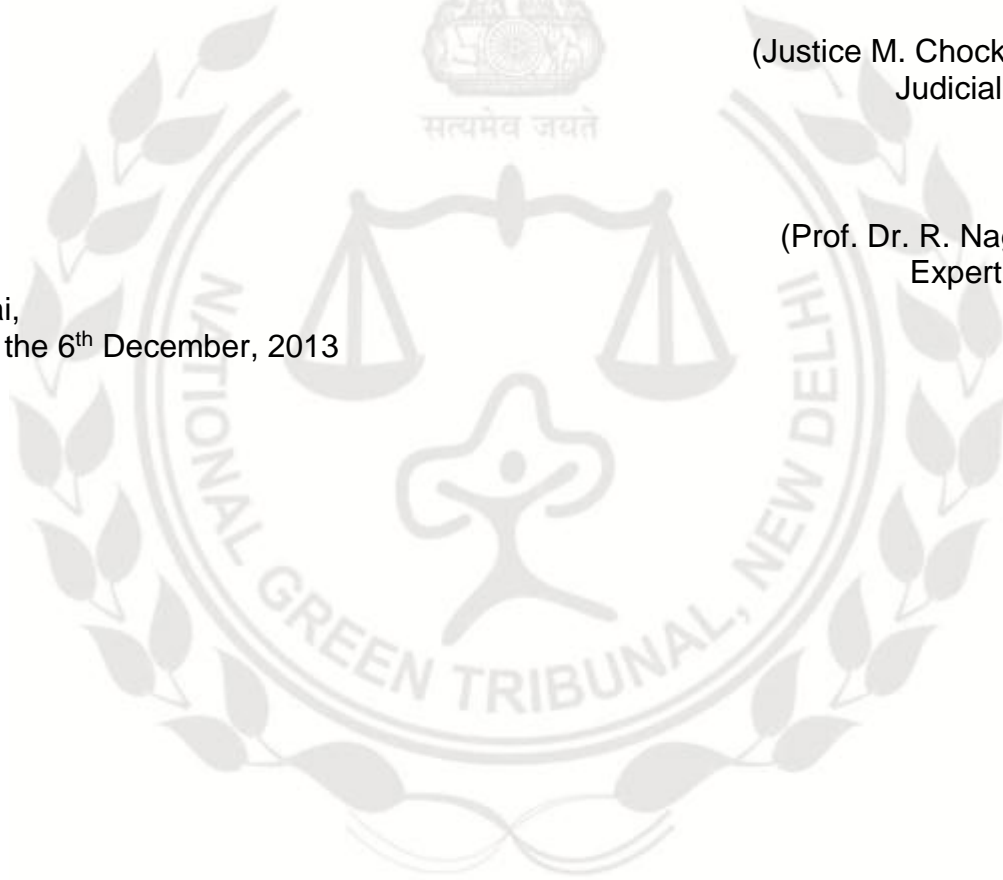
No cost.



(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai,
Dated, the 6th December, 2013



NGT