

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI  
Miscellaneous Application No. 53 of 2016  
in  
Application No. 96 of 2013 (SZ)**

**IN THE MATTER OF:**

Shanmuga Aqua Industries,  
No.1/2678, V.G. Street,  
M.G.R. Nagar,  
Gandhi Nagar West,  
Chennai-600 052  
Rep. by its Partner,  
G. Murugavel.



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Applicant(s)

**AND**

1. The Tamil Nadu Pollution Control Board,  
Rep. by the Chairman,  
No.76, Anna Salai, Guindy,  
Chennai- 600 032.
2. Tamil Nadu Pollution Control Board,  
Represented by its Member Secretary,  
No. 76, Anna Salai, Guindy,  
Chennai-600 032.
3. The Tamil Nadu Pollution Control Board,  
Rep. By its District Environmental Engineer,  
No.77-A, South Avenue Road,  
Ambattur Industrial Estate,  
Chennai- 600 058.
4. The Central Ground Water Authority,  
Under the Ministry of Water Resources,  
South Eastern Coastal Region,  
E-1, G- Block, Rajaji Bhavan,  
Besant Nagar, Chennai-600 090.

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Respondent(s)

**Counsel appearing for the Applicant:  
M/s. T.S. Rajamohan and  
P. Suresh Babu**

**Counsel appearing for the Respondents:  
Mrs. Rita Chandrasekar for R-1 to R-3**

## ORDER

**PRESENT:**

**HON'BLE SHRI JUSTICE Dr. P. JYOTHIMANI, JUDICIAL MEMBER**

**HON'BLE SHRI P.S. RAO, EXPERT MEMBER**

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**Dated 27<sup>th</sup> APRIL, 2016**

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Whether the Judgement is allowed to be published on the Internet – Yes/No

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

1. We have heard the counsel for the applicant as well as the respondents.

This Miscellaneous Application is filed by Shanmuga Aqua Industries praying for modification of final order dated 29.1.2016 passed in Application No. 96 of 2013 insofar as it relates to the applicant on the ground that the applicant is not covered under any one of the categories described in the final order passed by this Tribunal in the batch of applications/ appeals which was started in *Suo motu* Application No.40 of 2013.

2. Admittedly, in the batch of cases disposed of by this Tribunal, the applicant's Unit which is a packaged drinking water Unit, was categorized in the first category which relates to the units which cannot be permitted to operate. The applicant was thus having a legal duty as per the final order passed by this Tribunal, to close down its Unit against which the present modification application is filed.

3. According to the applicant, a show cause notice was issued by the Tamil Nadu State Pollution Control Board (Board) in the proceedings dated 18.3.2013 by which the Board has found that the applicant has been running the Unit without obtaining consent under Water (Prevention and Control of Pollution) Act 1974 and also without obtaining clearance from the Central Ground Water Authority. Therefore, by invoking the powers under Section 33-A of the Water (Prevention and Control of Pollution) Act 1974, the applicant Unit was directed to show cause as to why the Unit should not be closed. However, in spite of issuing the show cause notice it is stated that no further action was

taken and the applicant Unit was not directed to be closed though the applicant has submitted his explanation on 11.4.2013 for the show cause notice dated 18.3.2013.

4. In the mean time taking cognizance of News paper report complaining about large scale pollution caused by the packaged drinking water Units in Chennai City, a *Suo motu* Application No.40 of 2013 was directed to be numbered and the Corporation of Chennai, Tamil Nadu State Pollution Control Board (Board), Bureau of Indian Standards (BIS) were directed to be made as parties. Large number of interim orders came to be passed and ultimately three categories of Units were evolved after the Board and other agencies have submitted their reports namely (i) the Units which cannot be allowed to run since they have gone to irredeemable extent within -(A) category; (ii) the Units which cannot be permitted to run but can be permitted to have electricity supply only for the purpose of protection of membrane in the interest of protecting the machinery- (B) category; (iii) the Units which cannot be normally allowed to run but can be directed to be rectified in the course of time and therefore were permitted to carry on their business between 10 AM to 4 PM- (C) category.

5. Among the above said categories, the applicant's Unit was taken in the first category and therefore closure order should follow. The complaint of the applicant is that the applicant's case is not falling under any one of the aforesaid three categories. As per the report of the Board, the activities are being carried on without obtaining Consent to Operate and also No Objection Certificate (NOC) from the Central Ground Water Authority. However, the applicant has obtained NOC for drawal of ground water from the Government of Tamil Nadu, Water Resources Department, State Ground and Surface Water Resources Data Centre, Chennai on 9.7.2014. It is also stated by the applicant that for the Unit of the applicant there has been a license issued by the Government of Tamil Nadu, Food Safety and Drug Administration Department (Food Safety Wing) and the license is valid up to 23.7.2016. It is also stated that the applicant has obtained the license from the Bureau of Indian Standard which has permitted the Unit to run packaged drinking water business. However, the Board has not taken up the application filed for consent for the reason of pendency of large number of cases relating

to water pollution caused by the packaged drinking water Units throughout the State of Tamil Nadu. Therefore, according to the applicant, the categorization of the applicant's Unit under A- category is not correct and a mistake has crept in which has to be rectified by way of modification.

6. To substantiate the contentions of the applicant the counsel for applicant in M.A. No.53 of 2016, would rely upon the correlative report filed by the Board before this Tribunal on 25.5.2013 in O.A. No.40 of 2013 wherein the applicant's Unit is denoted under the heading "Status of Packaged Drinking Water Units located in respect of Office of the District Environmental Engineer (DEE), TNPCB, Chennai" at Sl. No. 20 wherein it shows that the sample collected from the Unit and handed over to King Institute, Guindy was tested and recorded that the sample "Complies to Standards" prescribed for "Packaged Drinking Water ". It was in fact based on the correlation statement, this Tribunal has categorized Units into three categories and passed appropriate final orders on 29.1.2016.. Therefore, the counsel for the applicant would submit that there appears to be an apparent mistake that crept in by including the applicant's Unit in A- category which has to be rectified in the interest of justice.

7. We have also heard the counsel for the respondent Board and referred to various documents filed by the applicant in support of his application. The documents as stated above include the license from BIS dated 13/21.1.2016, the license from the Government of Tamil Nadu, Food Safety and Drug Administration Department (Food Safety Wing) granted on 24.7.2014 which is valid up to 23.7.2016. That apart there are copies of NOC for drawal of ground water issued by the Water Resources Department dated 9.7.2014 subject to permissibility of certain quantity namely 30,000 LPD. It is also seen that the applicant has in fact filed an application for consent before the Board on 13.5.2013 and the said application appears to have been returned by the Board on the ground that permission for the purpose of drawal of ground water has not been obtained from PWD in the Wing of Water Resources Department.

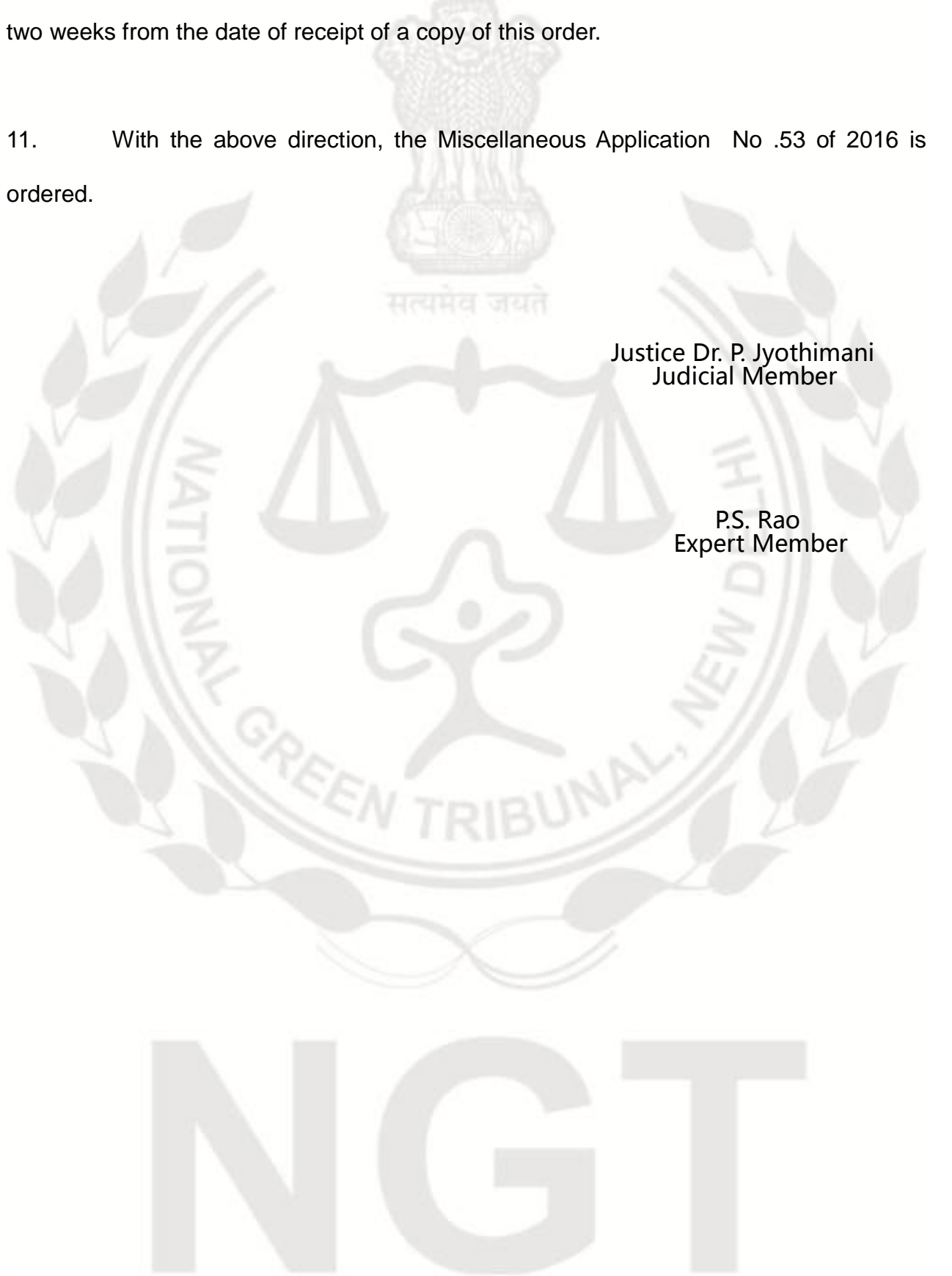
8. Now that, such permission has been obtained from the Department concerned, it is always open to the applicant to make necessary application to the Board along with prescribed fees for Consent to Operate supported with all the aforesaid documents in which event it will be always open to the Board to consider the application on merit and in accordance with law specifically taking note of the implication of the final order passed by this Tribunal dated 29.1.2016 to the above extent. The said consent application shall be filed within a period of one week from today and final order shall be passed by the Board after thorough inspection expeditiously in any event within a period of four weeks thereafter. While passing the final order the Board should fully satisfy that the applicant's Unit has been doing business legally by obtaining license / NOC from all the competent authorities. We make it clear that if the applicant submits consent application to the Board as directed above, which in the normal course has to be filed online, by downloading from the website of the Board, the Board shall process the application as stated above.

9. The order dated 29.1.2016 passed in the batch of cases including Application No.96 of 2013 stands modified only to the extent of the applicant's Unit and subject to the above said conditions. We make it clear that in the event of Board not considering the application in favour of the applicant, the applicant's Unit shall be governed by the Common Judgement passed by this Tribunal dated 29.1.2016.

10. Even though it is true that the applicant's unit has obtained various permissions and NOC from Food Safety and Drug Administration Department (Food Safety Wing) and other concerned Departments in the year 2014, it remains a fact that from 18.3.2013 onwards when there was a direction from the Board and subsequently when the matter has been taken up by this Tribunal and throughout the hearings, this unit has been treated as falling under Category- 1 which means that it should have closed its operations. There was no embargo on the part of the applicant at any point of time, to explain this Tribunal that he is not coming under the Category-1. Having not done so, in spite of categorizing the unit under Category- 1, the applicant has been running the unit and doing business and therefore to that extent there is a violation. We are of

the considered view that a nominal amount of compensation should be imposed on the applicant and accordingly we direct the applicant to pay a sum of Rs.20,000/- (Rupees twenty thousand) into the account of the Chennai River Restoration Trust (CRRT) headed by the Chief Secretary to Government of Tamil Nadu within a period of two weeks from the date of receipt of a copy of this order.

11. With the above direction, the Miscellaneous Application No .53 of 2016 is ordered.



Justice Dr. P. Jyothimani  
Judicial Member

P.S. Rao  
Expert Member