

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

APPEAL No.98 &99 of 2014 (SZ)

IN THE MATTER OF:

M/s. Jayam Blue Metal
Rep. by its Proprietor Mr. T. Robert Selva Kumar
No.50, Kamarajar Street
West Tambaram
Chennai - 600 045.

..Appellants

Versus

1. The Appellate Authority
Tamil Nadu Pollution Control
No.51, Gangadeeswarar Koil Street
Purasawalkam, Chennai – 600 084.
2. Tamil Nadu Pollution Control Board,
Rep. by its Chairman,
No.76, Anna Salai,
Guindy, Chennai-600 032.
3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
539/3, Bazar Street, Balaji Complex,
Padappai, Sriperumpudur- 601 301.

..Respondents

Counsel appearing for the Appellants : M/s. K.V. Sundararajan, K. Gopi,
G. Janakiraman and S. Vivekanandan

Counsel appearing for the Respondents: Smt. H. Yasmeen Ali for
Respondent Nos. 2 and 3;

JUDGMENT

PRESENT:

1. Hon'ble Shri Justice M. Chockalingam
Judicial Member

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

Dated, 13th October, 2015.

1. Whether the judgment is allowed to be published on the internet. Yes / No
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / No

1. The appellants filed these appeals before this Tribunal against the order of the Appellate Authority, the 1st respondent herein, dated 19.9.2014 in Appeal Nos. 13 and 14 of 2013 and Clause 2.2 of Board Proceedings (B.P.) Ms.No.4 dated 2.7.2004 imposing the criteria of 1 km distance between the stone crushers by the 2nd respondent Tamil Nadu Pollution Control Board (Board) and prays for a direction to the 2nd and 3rd respondents to give consent to the appellants for the stone crushing units in S.F. No.127/2,7 and 8 in Siruthamur Village, Uthiramerur Taluk, Kancheepuram District.

2. The appellants, M/s. Jayam Blue Metals, at S.F. No.127/2,7 and 8 in Siruthamur Village, Uthiramerur Taluk, Kancheepuram District applied for consent for establishing a stone crushing unit of 2000 tonnes per month *vide* its application dated 27.11.2012.

The appellant's states that the aforesaid land falls under unclassified area, *vide* letter dated 06.11.2012, issued by the Deputy Director of Town and Country

Planning, Chengalpattu Zone and the Tahsildar, Uthiramerur has issued a certificate, stating that there are no approved house sites within 500 metres. The appellants were running the stone crushing unit in the said site from October, 2006.

3. The applications submitted by the appellants for consent was rejected by the 3rd respondent, *vide* order dated 26.12.2012, citing B.P. Ms. No.4 dated 02.07.2004, issued by the 2nd respondent Board, as mentioned below respectively:

“The unit of M/s.Jayam Blue Metal has not complied the siting criteria prescribed by the Board vide reference 2nd cited. The unit is located 1 km from the existing stone crusher units functioning in the cluster. Hence, the application filed by M/s. Jayam Blue Metal for consent cannot be considered and the application is hereby rejected”.

As against the rejection of application for consent, the appellants, M/s. Jayam Blue Metal, in Appeal Nos. 13 and 14 of 2013 filed the appeal before the 1st respondent, Appellate Authority under Sections 31 of Air (Prevention and Control of Pollution) Act, 1981 (Air Act,1981) and Section 28 of Water (Prevention and Control of Pollution) Act, 1974 (Water Act,1974) respectively.

The 1st respondent, Appellant authority, *vide* its order dated 19.09.2014 dismissed the appeals filed by the appellants, by following the 1 km distance criteria imposed by the 2nd respondent Board in B.P. Ms. No.4 dated 02.07.2004.

4. The appellants challenge the B.P. Ms. No.4 dated 02.07.2004 as invalid and unsustainable in law on the grounds that it is not formulated as stipulated in Section 17 (1) (g) of the Air Act,1981 wherein State Pollution Control Boards in consultation with the Central Pollution Control Board has to lay down the standards of emission of air pollutants and under Section 17(1) the State Government has the power of regulating the location of the industry and the State Pollution Control Boards have only an advisory role hence the “siting criteria” under the B.P. Ms. No.4 dated 02.07.2004 is contrary to the provisions of the Air Act,1981. The applicants also challenge the distance criteria of 1 km imposed in clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 as unwarranted, arbitrary and untenable as it contravenes the recommendations of the National Environmental Engineering Research Institute (NEERI).

There was a delay of 40 days in preferring appeals before this Tribunal against the order of the 1st respondent dated 19.9.2014 and by an order dated 15.12.2014 of this Tribunal, M.A.Nos. 291 and 292 of 2014 which were filed for condonation of delay were allowed on payment of cost of Rs.3000/- in each appeal.

5. The respondent Board in its reply to the Appeals filed before this Tribunal, stated that the rejection is based on B.P. Ms. No.4 dated 02.07.2004, imposing the criteria of 1 km distance between the stone crushers and since 15

stone crushers are already operating within a distance of 1 km from the appellants' unit, the appellants cannot be permitted to run the same.

The units were inspected on 13.12.2012 by the officials of the Board and during the inspection the following observations were made:

i) The unit was under operation.

ii) The unit has provided the Air Pollution Control (APC) measures such as G.I. sheet enclosures, water sprinkling arrangements to the jaw crusher and vibrator to arrest the dust emission.

iii) No National Highway /State Highway and residences are located within 500 meter radius.

iv) About 15 stone crushing units are functioning within the radius of 1 km from this unit.

The respondent Board further stated in their reply that *vide* proceedings No.142 dated 10.10.1986 it fixed norms for the location of stone crushing units based on studies conducted by the Central Pollution Control Board and subsequently by means of B.P. No.609 dated 09.12.1992, the minimum distance of 1 KM between two crushing units was followed by the 2nd respondent Board based on the report of the Committee constituted by the TNPCB dated 03.07.1991 under the orders of the Hon'ble High Court of Madras dated 30.11.1990. According to the 2nd respondent, due to the ambiguity in the subsequently issued B.P.Ms.No.48, dated 09. 09.1998 wherein it was not clearly specified that the relaxation is applicable to the existing stone crushing units, it has only resulted

in the mushrooming of new stone crushing units near the National Highways/State Highways affecting the travelling public due to the severe dust pollution. According to the 2nd respondent, the units of M/s. Jayam Blue Metal have not complied with the siting criteria prescribed by the Board. The units are located within 1 km from the existing stone crusher units functioning in the cluster.

DISCUSSION AND CONCLUSION

6. Advancing the arguments on behalf of the appellants, the learned counsel would submit that the common impugned order of the Appellate Authority has to be set aside since it was on the grounds put forth to set aside the order by the 2nd respondent, Board rejecting the application for consent. The Appellate Authority has dismissed the appeals filed by the appellants following the 1 km distance criteria imposed by the 2nd respondent Board in B.P. Ms. No.4 dated 02.07.2004. Originally, by means of B.P.Ms.No.609 dated 09.12.1992 the minimum distance of 1 km between two stone crushing units was followed by the Board and on several representations by the stone crushing units to relax the norms, the respondent Board entrusted the study to NEERI, Nagpur to make an assessment as to the performance of APC by the stone crushing industries and assess the dust emission. After conducting the study on the stone crushing units which were in operation during the months of September and October, 1997 NEERI filed a report recommending that for a single crusher, an area of 50

metres radius should be left around the crusher with a 10 meter green belt at the periphery and for a cluster of 10 crushers, an open area of 150 metres radius should be left around the crushers with a 30 meter green belt at the periphery and for 25 crushers, an area of 250 metres should left around on all sides with a green belt of 50 metres at the periphery. After consideration, the report of NEERI was decided to be implemented by the Board in its meeting on 19.08.1998 and issued B.P. Ms. No.48 dated 09.09.1998. As per B.P. Ms. No.48 dated 09.09.1998 if the distance between two crushers was more than 100 metres, it would be considered as a single crusher and if the distance between the crusher boundaries is less than 100 metres, it would be considered as a cluster. Thus, the criterion of minimum distance of 1 km between two crushers was removed by the 1st respondent Board in B.P. Ms. No.48.

7. Subsequently, the Hon'ble Supreme Court of India, in SLP No. (C) No.13564 of 1998, permitted the existing units to continue, but made it clear that it was open to the Board to take into account of the report of NEERI for framing appropriate rules. The respondent Board, in its meeting held on 22.12.2000, decided to adopt the NEERI's recommendation in the case of existing stone crushing industries and in the case of new stone crushing industries, it was decided that it should be located 500 metres away from the habitations. Since the removal of distance criteria between two crushers was accepted, it was allowed to be continued by the respondent Board.

8. The Appellate Authority, in an appeal filed by *M/s. JVM Blue Metals*, Thiruvannamalai, considered an order of rejection of consent of the unit on the ground that it was located within 65 metres from the State Highway and the same was in violation of the B.P. Ms. No.609 dated 09.12.1992. The Appellate Authority *vide* its order dated 03.03.2004 held that after the introduction of B.P. Ms. No.48 dated 09.09.1998, it could not be the intention of the Board to maintain the norms mentioned in B.P. Ms. No.609 and issued directions to the Board to reconsider the issue of consent to *M/s. JVM Blue Metals* on the basis of B.P. Ms. No.48 dated 09.09.1998.

9. Thereafter, the Board proceeded to fix the norms with regard to the existing and new crushing units from the State/National Highways and habitation and the APC measures to be followed by the units. The distance between two stone crushers was not the issue and the same was not discussed or considered by the Board while issuing the impugned B.P. Ms.No.4, the 1st respondent Authority imposed the distance criteria of 1 Km between two stone crushers, *vide* Clause 2.2 and thus the introduction of the said condition was not only without discussion and consideration but also without any basis and thus it is arbitrary.

10. The distance criteria of 1km between two crushers, *vide* Clause 2.2 in B.P. Ms. No.4 dated 02.07.2004 was challenged before the Hon'ble High Court of Madras in W.P. No.1560 of 2006. In view of the interim stay granted by the

Division Bench of the Hon'ble High Court in respect of the 1 km distance criteria on 20.03.2006 and direction to the 1st respondent Authority to consider the application for consent without insisting for distance criteria, the 2nd respondent Board granted consent without insisting for the distance criteria not only to the petitioner, but to all the units throughout the State.

11. Finally, the Writ Petition was dismissed on 08.10.2010, but the grounds relating to the authority of the 1st respondent Authority to issue B.P. Ms. No. 4 and the legality of introducing the minimum distance of 1 km between the two crushers were neither considered nor adjudicated by the Hon'ble Division Bench of the High Court. Under such circumstances, the distance criteria as found in Clause 2.2 in B.P. Ms. No.4 dated 02.07.2004 cannot be applied and the order of rejection of the application of the appellant for consent and subsequent confrontation of the said order by the Appellate Authority has to be set aside.

The learned counsel for the respondent Board in her earnest attempt of confirming the orders of the Board and the Appellate Authority put forth her submissions.

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

13. As could be seen above, the application filed by the appellant stone crushing units for consent under the Water Act,1974 and Air Act,1981 were rejected by the 1st respondent Authority only on the distance criteria as set out *vide* clause 2.2 of B.P. Ms. No.4 dated 02.07.2004. On appeal, the learned Appellate Authority agreeing with the contention of the Board has confirmed the order of rejection and dismissed the appeals.

14. At the outset, it has to be pointed out that 15 stone crushing units are situated near to the appellant unit and is also located within 1 km from the same. As per B.P. Ms. No.4 dated 02.07.2004 the minimum distance which has to be maintained between two stone crushing units is shown in Clause 2.2 as below:

“The minimum distance between two stone crusher units should be 1 km to avoid dust polluttional influence of one over the other.”

No doubt, if the distance criteria as found above if applied to the appellants' units, the rejection of the application for consent has got to be sustained.

15. The bone of contention put forth by the learned counsel for the appellants is that the distance criteria in clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 is arbitrary which was also not warranted by circumstances and hence the distance criteria of 1 km between two stone crushing units should not be applied and thus the application of the distance criteria in clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 was erroneous and hence a direction has got to be issued for granting consent in favour of the units.

16. The Tribunal is afraid whether it can agree with the said contention of the learned counsel for the appellants. It is not in controversy that the original B.P. Ms. No.609 dated 09.12.1992 to the effect that minimum distance of 1 km between the units was opposed by the units. NEERI was entrusted with the study and assess the performance of APC measures maintained by the stone crushing industries and also the dust emission and in October, 1997 NEERI filed its report suggesting different distance criteria and parameters. Accepting the report, the Board issued B.P. Ms. No.48 dated 09.09.1998 adopting the distance criteria between two crushers wherein it was found that if the distance between two crushers was more than 100 metres it should be considered as a single crusher and if the distance between two crusher boundaries was less than 100 metres it would be considered as a cluster. No doubt, by the introduction of B.P. Ms. No.48 dated 09.09.1998 the minimum distance of 1 km between two crusher units has been fixed by the Board. The Hon'ble Supreme Court in SLP No. (C) No.13564 of 1998 while permitting the existing units to continue observed that it was open for the Board to follow report of the NEERI for framing appropriate rules. On the strength of the NEERI report, the Board decided and in the case of existing crushing industries and also new stone crushing industries, they should be located 500 metres away from the habitations.

17. While the matter stood so, the Board in order to fix the norms with regard to new/existing crushing units from State Highways/ National Highways and also the habitations and the APC measures maintained by the industry, issued B.P. Ms. No.4 dated 02.07.2004 imposing the distance criteria of 1 km between two stone crushing units *vide* Clause 2.2. The contention put forth by the appellants that the introduction of the distance criteria of 1 km *vide* Clause 2.2 was abrupt introduction, arbitrary and not warranted cannot be countenanced. The minimum distance of 1 km *vide* Clause 2.2 in B.P. Ms. No.4 dated 02.07.2004 was the subject matter of challenge before the Madras High Court in W.P. No. 1560 of 2006 though there was an interim stay in respect of the distance criteria, the Writ Petition was finally dismissed by the Hon'ble Division Bench stating that the applicant has not made any valid ground to question B.P. Ms. No.4 dated 02.07.2004. It is true that the Board has granted consent without insisting for the distance criteria not only to the appellant but also to all the crushing units during the interregnum period and the interim stay cannot be taken advantage by the appellants. It is pertinent to point out that the Writ Petition challenging the B.P. Ms. No.4 dated 02.07.2004 was dismissed since no valid ground was shown. After dismissal of the Writ Petition by the Bench stating that there was no valid ground to question B.P. Ms. No.4 dated 02.07.2004, it is too late and futile to state that B.P. Ms. No.4 dated 02.04.2004 is either arbitrary or not warranted by circumstances.

18. Taking into consideration the nature of the dust pollution likely to be caused by the stone crushing units fixing the minimum distance criteria of 1 km is highly reasonable in order to avoid the dust pollution influence over one another. Due to various anthropogenic pressures which are increasing day by day, air pollution is assuming alarming proportions and unless stringent measures are taken to control the pollution, it may further lead to disastrous consequences affecting the health of the citizens.

19. Thus, contentions put forth by the learned counsel for the appellants do not carry any merit whatsoever. The Tribunal has to necessarily consider the order of the Appellate Authority whereby the order of the Tamil Nadu Pollution Control Board was affirmed.

20. For the reasons recorded above, the appeals stand dismissed.
No order as to costs.

(Justice M. Chockalingam)
Judicial Member

(Shri P.S. Rao)
Expert Member

Chennai.
Dated, 13th October, 2015.

NGT