

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

APPEAL Nos. 17 & 18 of 2015 (SZ)

IN THE MATTER OF:

M/s. Velmurugan Blue Metals
Rep. by its Proprietor, Mr. C. Ranjithkumar,
Veerappa Gounden Valasu,
Thirumali Gounden Valasu Post,
Kallimandayam via,
Oddanchatram Taluk,
Dindigul District – 624 616.
Appellant

Versus

1. The Chairman
The Appellate Authority,
Tamil Nadu Pollution Control Board,
Krishna Vilas, No. 51
Gangadeeswarar Koil Street
Purasawalkam,
Chennai – 600 084.

2. The Chairman
Tamil Nadu Pollution Control Board
76, Mount Salai,
Guindy, Chennai – 600 032.

3. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Plot No. 44, 9th Cross Street
Thiruvalluvar Salai,
Dindigul – 624 003.

Respondents

Counsel appearing for the Appellant: M/s. T.Dharani and A.Saravanan.

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

JUDGMENT

PRESENT:

- 1. Hon'ble Justice M. Chockalingam**
Judicial Member
- 2. Hon'ble Shri. P. S. Rao**
Expert Member

Dated, 27th November,

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 Appeals have been filed to set aside the order passed in Appeal No. 40 of 2011 and Appeal No.41 of 2011 dated 23.01.2015 by the 1st respondent, Appellate Authority, Tamil Nadu Pollution Control Board (Board) under Section 31 of Air (Prevention and Control of Pollution) Act, 1981 and Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 respectively and the order passed by the 3rd respondent dated 29.06.2011 rejecting consent and to consequently direct the 2nd and 3rd respondents to grant consent to establish the appellant unit .

2. The brief facts of the case is that the appellant purchased the property in Survey Nos.1070/1A and 1070/2 in Koothampoondi Village, Oddanchatram Taluk, Dindigul District in the year 2004 to establish a stone crushing unit in the name and style of *M/s.Velmurugan Blue Metals* and he made an application dated 18.01.2011 under the Water Act, 1974 and the Air Act, 1981 before the 3rd respondent for Consent to Establish. The manufacturing process involves the crushing of raw boulders which will be procured from the nearby quarry into various sizes of stones. As per the National Environmental Engineering Research Institute (NEERI) recommendations, the unit proposed to install the preventive measures which included Jaw crusher, Vibratory sever, ¼ Jelly conveyor, Dust conveyor, metal sheet covering and water sprinkler to prevent water and air pollution. The appellant also stated that there are no National Highways or State Highways or residential areas near the proposed unit and hence there is no fear of any person being aggrieved by pollution, if any.

3. Based on the appellant's application dated 18.01.2011, the 3rd respondent by a proceeding dated 19.01.2011 directed the Commissioner, Thoppampatti Panchayat Union and the Tahsildar, Oddanchatram to furnish a report and their report stated that no residential areas, schools, temples, monuments, Government Offices or National or State Highways are situated near the proposed unit.

4. The appellant alleges that the 3rd respondent rejected their application by a proceeding in Letter No. DEE/TNPCB/DGL/F.1442/2011 dated 29.06.2011 on the extraneous reason that the proposed unit is situated within 1 km of another stone crushing unit which is prohibited as per B.P.Ms.No.4 dated 02.07.2004. Challenging the same, Appeal No.41 of 2011 and Appeal No.40 of 2011 were filed under Section 28 of the Water Act, 1974 and Section 31 of the Air Act,1984 respectively, before the 1st respondent and both the appeals were rejected *vide* an order dated 23.01.2015.

5. The appellant contends that there was no such condition imposed at the time of submitting the application for consent and the 3rd respondent could not introduce a new condition which does not find place in the application and it is illegal. The conjoint reading of the Clause 2.1 and 2.2 in B.P. Ms. No.4 dated 02.07.2004 makes it amply clear that the distance of 1 km between two crushing units is not mandatory as it permits a crushing unit to be located only 500 meter away from National Highways or State Highways or residential places.

6. A Miscellaneous Application No.64 of 2015 (SZ) in Appeal No. 17 of 2015 and Miscellaneous Application No.65 of 2015(SZ) in Appeal No.18 of 2015 were filed for condoning the delay of 1 day and 9 days respectively in preferring the appeals. The applications were allowed by an order of this Tribunal dated 10.03.2015 on the reason that the delay in filing the appeals were not too long.

7. According to the 2nd and 3rd respondents, the appellant unit applied for the consent of the Board on 14.02.2011 along with enclosures including certificate obtained from the Tahsildar, Oddanchatram and the Commissioner, Thoppampatti Panchayat Union. The unit also furnished an extract of combined Field Measurement Book (FMB) comprising of S.F. No. 1070, 1071, 1069, 1098, etc., duly signed by the Deputy Tahsildar (Headquarters), Oddanchatram Taluk and Village Administrative Officer of Koothampoondi Village. However the unit had not enclosed the topo sketch showing the details of nearby stone crushers, schools, colleges, temples, etc., located within a radius of 1 km and was addressed to furnish the same *vide* Letter No.DEE/TNPCB/DGL/F.1442/2011 dated 30.03.2011. Since, even after a lapse of 45 days the unit did not furnish the same, the application was returned with a direction to resubmit *vide* Lr. No.DEE/TNPCB/DGL/F.1442/2011 dated 17.05.2011 and on 16.06.2011 it was resubmitted along with the topo sketch of 1 km radius. In the topo sketch furnished by the unit, it was mentioned that there is a stone crusher located at a distance of 800m from their proposed stone crushing unit. In the mean time, the interim stay granted by Hon'ble High Court of Madras in W.P. No.1560 of 2006 and W.P. No.12264 of 2006 with regard to the distance criteria between two stone crushers mentioned in B.P. Ms. No.4 dated 02.07.2004 was vacated by the Hon'ble High Court of Madras *vide* its order dated 08.10.2010 and B.P. Ms. No.4 dated 02.07.2004 was upheld. The application for granting consent to the unit was rejected *vide* Letter

No.DEE/TNPCB/DGL/F.1442/2011 dated 29.06.2011 based on the B.P. Ms. No.4 dated 2.7.2004 which insists a clear distance of 1 km between two stone crushers to avoid dust pollution influence of one over the other.

8. Subsequently, the unit made an appeal before the Hon'ble Appellate Authority in Appeal Nos. 40 & 41 of 2011. The Hon'ble Appellate Authority in its order dated 23.01.2015, quoting Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 stated that

“We are inclined to agree with the contention put forth by learned counsel for the respondent Board and hold that appeals have no merits and are liable to be dismissed”.

Accordingly, those Appeals were dismissed.

9. The proposed stone crushing unit site was inspected on 31.03.2015 in the presence of its proprietor *M/s. Velmurugan Blue Metals* and during inspection, it was noticed that the unit has not added any civil construction except ramp for bunker which was already constructed and has not installed the crusher machinery.

DISCUSSION AND CONCLUSION

10. As seen above, these appeals challenge a common judgment of the Appellate Authority confirming an order of rejection of an application filed by the appellant for consent of his Blue Metal unit in Survey Nos.1070/1A and 1070/2 in Koothampoondi Village, Oddanchatram Taluk, Dindigul District.

Admittedly, the appellant, *M/s.Velmurugan Blue Metals*, for the proposed stone crushing unit in Survey Nos.1070/1A and 1070/2 in Koothampoondi Village, Oddanchatram Taluk, Dindigul District made an application for consent and after following the procedural formalities as envisaged under the enactments viz. the Water Act, 1974 and the Air Act, 1981, an inspection was made on 26.03.2011 by the officials of the Board. It was noticed that the stone crushing unit of *M/s.Satyamurugan Blue Metal* is located at a distance of 800 meter from the proposed unit of the appellant. After hearing the representation of the appellant, the application for consent was rejected following the distance criteria prescribed in B.P. Ms. No.4 dated 02.07.2004. Aggrieved on the rejection of the application, the appellant preferred the Appeal Nos. 40 & 41 of 2011 before the Appellate Authority which were dismissed.

11. The whole contention raised by the learned counsel for the appellant as it was equally done before the Appellate Authority is that the appellant has put up all the necessary steps of Air Pollution Control (APC) measures to arrest the emissions which included Jaw crusher, Vibratory sever, ¼ Jelly conveyor, Dust conveyor, metal sheet covering and water sprinkler. The appellant also proposes to have a green belt with 10 meter width in 50 meter radius around the crushing area. The learned Counsel for the appellant pointing to a letter issued by the Commissioner, Thoppampatti Panchayat Union dated 27.01.2011 and the Tahsildar, Oddanchatram would submit that there are no residential houses, schools, temples, monuments, Government offices, National or State Highways

situated within 500 meter distance of the proposed unit and in view of the above factual position and since all the preventive and precautionary measures are proposed to be taken by the appellant, the Board should have granted the consent.

The learned Counsel for the Board in reply, put forth the submissions to sustain the order of the Board and also of the Appellate Authority.

12. The point for determination is whether the order of the Appellate Authority in the aforesaid appeals is liable to be set aside on or any of the grounds put forth in the appeals. After hearing the submissions of the learned Counsel and also of the scrutiny of the materials made available, the Tribunal is of the considered view that no case is made out by the appellant warranting any interference in the order of rejection by the Board of the Blue Metal crushing unit.

13. It would be apt and appropriate to reproduce Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004.

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

14. It is not disputed by the appellant that following his application for consent, the District Environmental Engineer (DEE) of the Board made an inspection on 23.06.2011, wherein it was noticed that the site for the proposed

crusher of the appellant is located at a distance of 800 meter from *M/s. Satyamurugan Blue Metals* which is an already existing stone crushing unit. Thus it would be quite clear that the proposed site for the appellant unit is less than 1 km from an existing stone crushing unit. The appellant who is unable to satisfy the distance criteria as found in Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 cannot have shelter under the certificates issued either by the Commissioner, Thoppampatti Panchayat Union or the Tahsildar, Oddanchatram that there are no residential houses, schools, temples, monuments, Government offices, National or State Highways situated within 500 meter distance of the proposed unit. Equally, the so called precautionary and preventive measures proposed to be taken by the appellant even if taken, would not satisfy the requirement of the distance criteria as envisaged under Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004. At this juncture, it is pertinent to point out that the Hon'ble High Court of Madras had an occasion to consider the validity of Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 in WP No. 1560 of 2006 and on the consideration of the merits, the same was dismissed by an order dated 08.10.2010. After dismissal of the Writ Petition by the Bench upholding 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 02.07.2004 is either arbitrary or not warranted by circumstances.

15. In view of the above, contentions put forth by the appellant side do not merit any acceptance and both the appeals have got to be dismissed as devoid of merits. Accordingly, dismissed.



सत्यमेव जयते

(Justice M. Chockalingam)
Judicial Member

**(Shri P.S.
Rao)**
Expert
Member

Chennai.
Dated, 27th November, 2015.

NGT