

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

Application No. 39 of 2015 (SZ)

IN THE MATTER OF:

M/S. Empee Power and Infrastructure Pvt. Ltd,
'Empee Tower'

No.59, Harris Road, Pudupet,
Chennai – 600 002

Rep.by its Chairman M.P. Purushothaman

..... Applicant

AND

1. The Government of Tamil Nadu
Rep. by Principal Secretary to Government,
Environment and Forest Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2. The Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
Anna Salai, Guindy,
Chennai – 600 032.

..... Respondent(s)

Counsel appearing for the Applicant:

**M/s. A.L. Ganthimathi, P. Srinivas
Meenakshi Ganesan**

Counsel appearing for the Respondents:

**M/s. M.K. Subramanian and P. Velmani for R1
Smt. Rita Chandrasekaran for R2**

ORDER

PRESENT:

HON'BLE SHRI JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER

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

Dated 19th September, 2016

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. This is an application filed under Section 14 of the National Green Tribunal (NGT) Act, 2010 with a prayer to set aside the order dated 10.01.2014 passed by the 1st respondent. The applicant, a Private Limited Company, intended to establish 1320 MW coal based Coastal Thermal Power Plant in 400 acres of land in Neithavasal Village, Sirkali Taluk, Nagapattinam District, State of Tamil Nadu. They obtained Terms of Reference (TOR) under the Environment Impact Assessment Notification (EIA) dated 14.11.2016 from the Ministry of Environment and Forests, Government of India on 20.01.2010. Admittedly, the applicant did not obtain the Environmental Clearance (EC) so far and has not even undertaken the public hearing. In the meanwhile realising the prohibition provided under G.O.Ms.No.127, Environment & Forests Department, dated 08.05.1998 for establishment of any polluting industries within 5 km from the Cauvery river and its tributaries, the applicant made representation before the Government for relaxation of the provisions and on the failure to get the desired result, approached this Tribunal by filing the original Application No. 153 of 2013 praying for a direction to the

respondents to consider the request of the applicant for exempting the power plant proposed to be established by the applicant from the distance prohibition contained in G.O.Ms.No.127, dated 08.05.1998.

2. The Tribunal by order dated 03.10.2013 directed the respondents to consider the representation and to take appropriate decision in accordance with law within a period of two months. Pursuant to the direction, the 1st respondent passed the impugned order dated 10.01.2014, whereunder the prayer was rejected, holding that the relaxation is not feasible. In fact, it is challenging the said order, the application is filed before the Tribunal on 20.01.2015. In fact, the applicant filed W.P SR.No.78664 of 2014 under Article 226 of the Constitution of India to quash the said order by the High Court of Madras. But, at the admission stage itself, the applicant sought permission to withdraw the Writ Petition with liberty to approach this Tribunal. By order dated 1st September 2014, the Writ Petition was dismissed with the liberty sought for. It is after 4 ½ months from that date the applicant filed this Original Application. Though the applicant has contended that it is a continuing cause of action and therefore, limitation is not applicable. we cannot agree. The order rejecting the request for exemption was passed on 10th January 2014 and the cause of action has arisen on that day. .

3. The application, as already noticed, is to set aside the order dated 10.01.2014. That order itself was procured by the applicant on a representation made before the 1st respondent and that too after obtaining a direction from this Tribunal to consider and pass appropriate orders in accordance with law on the representation. When the request in the representation was rejected and the applicant is aggrieved

by that order, the remedy is to challenge that order in accordance with the law. Even if it is treated that the impugned order cannot be challenged by way of an appeal as provided under Section 16 of the NGT Act, 2010 and therefore, an application under Section 14 of the NGT Act, 2010 is maintainable, the application is to be filed as provided under Section 14 of the NGT Act, 2010 and that too, within the period of limitation. Section 14 reads as under:

“14. Tribunal to settle disputes: (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

2. The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

4. The application, filed on 20.01.2015 more than a year after the impugned order was passed, is therefore not maintainable in law. The cause of action first arose on 10.01.2014. When the challenge is against that order, it cannot be said that it is a continuing cause of action and therefore the application is filed within time. The application is clearly barred by time. Therefore, on that sole ground, the application is to be rejected.

5. Whatever it be, even according to the applicant, G.O.Ms. No 127 dated 08.05.1998, applies to the case. The representation of the applicant can only be decided based on the provisions in the G.O.Ms.No. 127, dated 08.05.1998. The applicant has not challenged the G.O.Ms.No. 127 dated 08.05.1998 and has only contended the stipulations made therein was based on the conditions prevailing in 1998 and the State is bound to take into account the subsequent developments and therefore exemption could be granted. In effect the intention of the applicant is to get modification of the G.O.Ms.No 127 dated 08.05.1998, which according to the applicant, needs modification based on the scientific developments that came into existence after 1998. If so, the remedy is different and not to challenge the impugned order.

6. Therefore, even on merits, the application is liable to be dismissed. It is dismissed but in the circumstances, with no order as to costs.

Justice M.S. Nambiar
Judicial Member

P.S. Rao
Expert Member

NGT