

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

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**ORIGINAL APPLICATION NO. 464 OF 2015
AND
M.A. NO. 1064 OF 2015
IN
ORIGINAL APPLICATION NO. 37 OF 2015**

IN THE MATTER OF:

M/s. SSM Builders & Promoters
SSM Nagar, Puthur (Mappedu Road)
Alapakkam
Chennai – 600063
Tamil Nadu through its
Partner M. Karthikeyan

Applicant

Versus

1. Union of India
Through its Secretary
Ministry of Environment and Forests,
Government of India,
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi - 110003
2. Tamil Nadu Pollution Control Board
Through its Member Secretary,
76, Mount Salai, Guindy,
Chennai – 600 032
3. State Environment Impact Assessment Authority
Panagal Building, Saidapet,
Chennai – 600 015.

Respondents

AND

S.P. Muthuraman
S/o. Ponnusamy,
No. 204, Railway Feeder Road,
Sankar Nagar Post–627 357
Tirunelveli District

.....Applicant

Versus

Union of India & Ors.

..... Respondents

AND IN THE MATTER OF:

M/s. SSM Builders & Promoters
SSM Nagar, Puthur (Mappedu Road)
Alapakkam
Chennai – 600063
Tamil Nadu through its
Partner M. Karthikeyan

Applicant/Respondent No. 6

COUNSEL FOR APPLICANTS:

Mr. R. Chandrachud, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Rahul Pratap, Mr. Balendu Shekhar, Mr. Akshay Abrol and
Mr. Vivek Jaiswal, Advocates for Respondent No. 1
Mr. Rajkumar, Advocate with Mr. S.L. Gundli, Senior Law Officer,
Mr. Bhupender Kumar and Ms. Niti Choudhary, (Legal Asst.) for
CPCB
Ms. Sakshi Popli, Mr. Nitin Khurana, Advocates for SIEAA-TN
Respondent No. 5
Mr. M. Yogesh Kanna and Mr. Jayant Patel, Advocates for TNPCB

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. M.S. Nambiar (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 22nd December, 2015
Pronounced on: 18th February, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By a common judgment dated 7th July, 2015, the Tribunal had disposed of Original Application No. 37 of 2015 titled S.P.

Muthuraman v Union of India & Ors and Original Application No. 213 of 2014 titled *Manoj Mishra v Union of India* along with miscellaneous applications filed by the parties. The Tribunal disposed of all these matters by passing the following directions:

“163. In view of the above detailed discussion, we pass the following order and directions:

- 1) We hold and declare the office memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.
- 2) Consequently, the above office memoranda are held to be ineffective and we prohibit the MoEF and SEIAA in the entire country from giving effect to these office memoranda in any manner, whatsoever.
- 3) We hold and declare that the resolution/orders passed by the SEIAA de-listing the applications of the Project Proponents do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and Notification of 2006 and do not call for interference.
- 4) We hereby constitute a Committee of the following Members:
 - a) Member Secretary of SEIAA, Tamil Nadu.
 - b) Member Secretary, Tamil Nadu Pollution Control Board.
 - c) Professor from Department of Civil Engineering, IIT, Environmental Branch.
 - d) Representative not below the rank of Director from Ministry of Environment and Forest (to be nominated in three days from pronouncement of this judgment).
 - e) Representative of Chennai Metropolitan Development Authority.
- 5) The Member Secretary of Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in the judgment.
- 6) The above Committee shall inspect all the projects in question and submit a

comprehensive report to the Tribunal. The comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other anti-pollution devices by the Project Proponents including proposed point of discharge on sewage and any other untreated waste. The Expert committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically environmentally sensitive areas and details of alteration of the natural topography and its effect on the natural topography, the natural drainage system etc. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

- 7) The Committee shall further report if the conditions stated in the planning permission, and permissions granted by other authorities have been strictly complied with or not.
- 8) The Committee shall also report to the Tribunal if the suggestions made by SEIAA in their meetings adequately takes care of environment and ecology in relation to these projects.
- 9) What measures and steps including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?
- 10) The report should be submitted to the Tribunal within 45 days from the date of pronouncement of this judgment.
- 11) All the Project Proponents shall pay environmental compensation of 5 per cent of project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized construction carried out by them. They shall deposit this amount at the first instance and subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai: **7.4125 crores.**

M/s Ruby Manoharan Property Developers Pvt. Ltd.: **1.8495 crores.**

M/s Jones Foundations Pvt. Ltd.: **7 crores.**

M/s SSM Builders and Promoters.: **36 crores.**

M/s SPR and RG Construction Pvt. Ltd.: **12.5505 crores.**

M/s Dugar Housing Ltd.: **6.8795 crores.**

M/s SAS Realtors Pvt. Ltd.: **4.5 crores.**

- 12) The compensation shall be payable to Tamil Nadu Pollution Control Board within three weeks from the day of pronouncement of the judgment. The amounts shall be utilised by the Boards for the above stated purpose and subject to orders of the Tribunal.
- 13) After submission of the Report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

The reports shall be submitted to the Registry of the Tribunal within a period of 45 days from the pronouncement of the judgment. Thereupon the Registry would place the matter before the Tribunal for further appropriate orders and directions.”

2. Being dis-satisfied, some of the parties preferred statutory appeal before the Hon’ble Supreme Court of India, upon which notice was issued and operation of the judgment had been stayed. However, the present applicant did not prefer any statutory appeal before the Hon’ble Supreme Court of India and on the contrary prayed before the Tribunal that its judgment be given full effect. Also after filing of this application, the party sought clarification before the Hon’ble Supreme Court of India as to whether the matter in relation to persons who had not filed any appeal before the Hon’ble Supreme Court could be proceeded with before this Tribunal in accordance with law.

3. The Applicant had on 9th October, 2015 filed a miscellaneous application being M.A. No. 1064 of 2015 in Original Application No. 37 of 2015 titled as *S.P. Muthuraman v. Union of India & Ors.*, praying that the Expert Committee constituted by the Tribunal under para 163 of the judgment dated 7th July, 2015 should be directed to complete the inspection and submit the report to the Tribunal in respect of the project of the applicant. Later, the Applicant–M/s. SSM Builders and Promoters filed another application being Original Application No. 464 of 2015 titled as *M/s S.S.M. Builders and Promoters v. Union of India & Ors.*, praying therein that the respondent should be directed to grant Environmental Clearance (for short, “EC”) in respect of the project. As it is evident the said project proponent had accepted the judgment of the Tribunal dated 7th July, 2015 and in fact prayed before the Tribunal that the official respondents be directed to comply with the various directions passed in the judgment. The project proponent was, and is willing to completely perform his part in terms of the directions. It is only upon compliances by the respondents that the judgment of the Tribunal could be completely and finally executed.

4. In terms of the judgment dated 7th July, 2015, this project proponent was required to pay a sum of Rs. 36 crores as environmental compensation. He had filed a miscellaneous application being M.A. No. 723 of 2015 in Original Application No. 37 of 2015 titled as *S.P. Muthuraman v. Union of India & Ors.*,

praying for exemption from depositing sum of Rs. 36 crores in terms of the judgment of the Tribunal. This application was dismissed by the Tribunal vide order dated 1st September, 2015. Thereafter, the Applicant deposited an amount of Rs. 36 crores as environmental compensation with the concerned authorities within the prescribed period.

5. During the pendency of M.A. No. 1064 of 2015, the Committee constituted under the judgment was directed to expedite the submission of the report. First interim report dated 24th November, 2015 was submitted and thereafter the final report was also submitted before the Tribunal by the Expert Committee. Once the reports have been submitted to the Tribunal, the only question that remains to be considered by the Tribunal is issuance of directions in regard to the project in question. To deal with this aspect, the reference to the report of the Expert Committee would be necessary.

6. In furtherance to the directions issued by the Tribunal, in the judgment dated 7th July 2015, the Committee conducted site inspection of the project in question and then reported the matter on various issues relating to illegal and unauthorised activities carried out by the project proponent, ecological and environmental damage done by these projects, installation of STPs and anti-pollution devices, proposed point of discharge and other untreated waste, use of energy efficient devices, alteration of lands, its effect on natural topography and violations of conditions stated in the planning permissions. When one looks into the report in its

entirety, it becomes evident that the project proponent has on the one hand, not complied with its statutory obligations while on the other hand, it is required of the project proponent to take different measures in the interest of environment and ecology. For instance, the project proponent started construction and continued it without obtaining EC. It also did not obtain consent of the Tamil Nadu Pollution Control Board to start the project and also violated the conditions in terms of building permit and Panchayat permissions. As per the report, the project proponent is expected to put in place system for handling discarded CFL and LED lamps, demarcation of site for collection of construction debris, proper arrangements for utilisation of treated sewage, and the compliance of conditions which the project proponent should be required to comply with before it is made operational. The report also required installation of online system to monitor the effluent quality, provisions to be made in regard to car parking, collection, segregation and disposal of municipal solid waste in accordance with Rules and undertaking various other steps in compliance to the different directions imposed, enabling the applicants to go ahead further with the project.

7. At this stage, we may notice that the learned Counsel appearing for the project proponent had stated before us during the course of hearing of these applications that the project proponent would comply with all the conditions stated in the report of the Expert Committee. When the matter came up for hearing on 11th

December, 2015, the statement of the learned Counsel was recorded. The said order reads as under:

“Learned counsel appearing for the Project Proponent submits that they are prepared to comply with all the directions contained in the report of the Expert Committee and submits that their projects be granted Environmental Clearance expeditiously as they are suffering huge financial losses.

Learned counsel appearing for the Tamil Nadu Pollution Control Board submits that the report is acceptable to them and prays that directions be passed accordingly.

Learned counsel appearing for the MoEF and Tamil Nadu, SEIAA respectively submit that they need time to take instructions.

These Authorities have already taken number of adjournments. In the interest of justice, we grant last and final opportunity to them.

List these matters on 15th December, 2015”

8. The project proponent filed a reply to the report which is hardly of any consequence since he is hardly in a position to dispute the correctness of the report filed by the inspection team. A violator of law can barely be permitted to raise such objections to the report but he admits that the report is the correct description of the site. Applicant had filed certain objections to the interim report which are also equally vague. As far as the disposal of waste is concerned, we are inclined to accept that the report provides due mechanism for disposal of waste which in any case is required to be in consonance with the statutory rules in force. For water extraction, the project proponent would require the permission of the Central Ground Water Authority which if granted would obviously be subject to the conditions stated thereupon. The contour map does indicate alteration in the topography of the land but that itself would not be sufficient for dismissing the prayer of

the Applicant as environmental compensation has already been imposed upon the Applicant in that behalf. Provision of conduit drainage as a substitute for natural water storm channel is an objection which requires consideration. We direct the SEIAA to examine the same and if necessary, the project proponent can be called upon to restore the natural drain.

9. From the above discussions, it becomes absolutely clear that the applicant has made out a case for grant of directions to the concerned authorities to consider the case of the Applicant in accordance with law. Such entitlement is clearly founded on the condition that the project proponent would comply with the conditions stated in the report and/or even such further conditions as may be imposed by the competent authority while considering the case of the Applicant for grant or refusal of EC. For the statutory violations committed by the project proponent, we have already imposed environmental compensation of Rs. 36 crores which has been deposited by the Applicant. Thus, satisfying one of the basic conditions of the judgment dated 7th July, 2015, it is in view of the Principle of Sustainable Development and the Precautionary Principle that the Tribunal had passed the detailed directions in its judgments as afore-referred. They would continue to be in force. Having made the above submissions, the Applicant had filed two applications with the prayers as afore-noticed. The prayers of the Applicant in these applications are certainly bonafide and well founded.

10. Thus, we dispose of both these applications with the following directions:

1. The SEIAA, Chennai shall deal with the applications filed by the project proponent for grant of EC in accordance with law with utmost expeditiousness now, and in any case within a period of three months from the date of passing of this judgment in accordance with law.
2. The order so passed, shall become operative subject to the orders of the Tribunal. The Registry is directed to place the order before the Tribunal as and when the same is received.
3. We direct that the SEIAA, Chennai will take its first sitting in regard to case of the Applicant by 25th February, 2016. It shall take into consideration and impose all the conditions that have been recommended by the Committee in its report dated 24th November, 2015. This report shall be cumulatively examined and given effect to by SEIAA, Chennai.
4. SEIAA, Chennai shall be free to impose such further conditions, which should be precise and definite, as stated in the judgment as well as in the report. The conditions imposed should particularly deal with the aspect of restoration, remedial and preventive steps that should be taken by the project proponent as the project presently is an ongoing project.

5. We also direct SEIAA to direct the project proponent to restore natural drains, wherever possible and also to make provisions for conduit drainage system to substitute the open natural storm water channels, but only when it is absolutely unavoidable.
6. SEIAA, Chennai would also examine if any damage has been done to the ecology, environment, drainage system or any other system prevailing in and around the project site and the remedial steps that are required to be taken for correction and restoration thereof.
11. With the above directions, the applications are disposed of without any order as to costs.

Swatanter Kumar
Chairperson

U.D. Salvi
Judicial Member

M.S. Nambiar
Judicial Member

Bikram Singh Sajwan
Expert Member

Ranjan Chatterjee
Expert Member

New Delhi
18th February, 2016