

M/S. SOUTHERN PETROCHEMICAL
INDUSTRIES CORPN. LTD.

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v.

S. JOEL & ORS.

(Civil Appeal No. 11935 of 2018)

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FEBRUARY 04, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Environmental Law:

Diversion of forest land for non-forest purposes – Guidelines in respect of – Issued by Union Government – Delegating the authority to State Governments to permit diversion of forest land upto one hectare for the purpose of Government departments for public utility purposes – Government of Tamil Nadu accorded approval for diversion of 0.055 hectares of forest land to Water Supply Drainage Board for public purpose as per the guidelines i.e. ‘drinking water purposes’ – Complaint before National Green Tribunal, that instead of confining the use of water for drinking purposes, the Board permitted the water for industrial purposes – Tribunal by its interim order dated 7.7.2017 granted status quo subject to the condition that the Board would scrutinize the need of water for industrial purpose and that sufficient quantity of water was available for drinking purpose – Tribunal finally disposed of the case directing the Board to use the water drawn under forest clearance only for drinking purposes and prohibited the use for industrial units – In appeal to Supreme Court, on the grievance raised by Tuticorin Power Plant as to difficulties in absence of regular water supply, the Court stayed the order of Tribunal in respect of that power plant subject to condition that drinking water needs were fully met – Held: Direction issued to the Collector to independently assess the situation as to ensure that need for drinking water and irrigation is not compromised; and whether surplus water is available after meeting the requirement for drinking water – If the Collector finds that there is surplus water, direction may be issued for allocating water for the industrial purposes – Till the decision is taken by the Collector, the interim order of Tribunal dated 7.7.2017 is restored – It is also directed that the Board and the State Government would decide the issue as to the proposal sent

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- A by the Board under Forest Conservation Act, to the State Government – Appeals disposed of – Forest Conservation Act, 1980.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11935 of 2018.

From the Judgment and Order dated 28.11.2018 of the National

- B Green Tribunal Principal Bench, New Delhi (Through Video Conferencing) in Original Application No. 128 of 2017 (SZ)

WITH

Civil Appeal Nos. 12224, 12227 of 2018, 834 and 1332 of 2019.

Balaji Srinivasan, (AAG), Ranjit Kumar, Huzefa Ahmadi,

- C Ravindra Shrivastav, Sr. Advs., K. K. Mani, Ms. T. Archana, Vinodh Kanna B., Ms. S. Valarmathi, Ms. Pallavi Sengupta, C. Paramasivam, M. Avokiyaraj, M. Yogesh Kanna, K. V. Vijayakumar, R. Naveenraj, Ms. Purbitaa Mitra, Ms. Anitha Shenoy, Y. Arunagiri, Ramesh (for P. Soma Sundaram), Sanjai Kumar Pathak (for G. S. Makker), Mahesh D Agarwal, Ms. Aastha Mehta, Rajesh Kumar (for E. C. Agrawala), Advs. for the Appearing Parties.

The following Order of the Court was passed :

O R D E R

1. Appeals Admitted.

- E 2. This batch of appeals arises from a decision of the National Green Tribunal¹ dated 28 November 2018.¹

3. On 15 June 2004, the Government of India in the Ministry of Environment and Forests² issued guidelines regulating the diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980. These guidelines were clarified on 3 January 2005. The guidelines delegate to the state governments the authority to permit diversion of forest land up to one hectare for the purpose of government departments for public utility purposes. The permissible activities are :

G “1. Schools;

2. Dispensary/hospital;

3. Electric and Telecommunication lines;

4. Drinking water;

5. Water/rainwater harvesting structures;

6. Minor irrigation canal;

H ¹ “The Tribunal”
² “MoEF”

- 7. Non-conventional sources of energy; A
- 8. Skill up-gradation/vocational training centre;
- 9. Power sub-stations;
- 10. Communication posts; and
- 11. Police establishments like police stations/outposts/border B
outposts/ watch towers, in sensitive areas
(identified by Ministry of Home Affairs.)"
(emphasis supplied)
- 4. Based on the above guidelines of the Government of India, C
on 7 March 2008, the Government of Tamil Nadu accorded approval for diversion of 0.055 hectares of forest land in Sy.No.600 of Srivaigundam Village in Thoothukudi Division of the Tamil Nadu Water Supply and Drainage Board (TWAD Board) for construction of an intake well (along with a control room and foot bridge) for "drinking water purposes". This permission was subject to certain conditions. The facility has been set up. D
- 5. A proceeding was instituted before the National Green Tribunal by the first Respondent, complaining that instead of confining the use of water for drinking purposes, TWAD Board has permitted the use of water for industrial purposes. E
- 6. The Union Ministry of Environment, Forests and Climate Change (MoEF&CC) submitted before the Tribunal that if the proposal involved a diversion of forest land both for drinking water and industrial purposes, then it would not fall within the purview of the "General approval" category under the Forest Conservation Act, 1980. MoEF&CC submitted that the user agency had acted in violation of the Act by utilizing an additional area measuring 0.025 hectares of forest area for non-forestry purposes in addition to a change in the purpose for which the approval was accorded by the State Government. F
- 7. TWAD Board submitted before the Tribunal that on 23 July 2018, it has moved the State Government to approach MoEF&CC for its clearance, so as to permit the use of the area in question for both drinking water and industrial purposes. G
- 8. The proposal submitted by TWAD Board has not yet been received by the Union Government. It is pending with the Government of Tamil Nadu. H

- A 9. The Tribunal issued a direction to the TWAD Board to prohibit the use of water drawn under the forest clearance for 0.055 hectares for industrial purposes, since it was granted only for the purpose of drinking water. The Tribunal, however, clarified that it was not prohibiting the use of water for drinking purposes by housing colonies, schools, hospitals, etc. and the prohibition was only confined to the industrial units.
- B 10. During the pendency of the proceedings before the Tribunal, an interim order was initially passed on 31 May 2017, in the following terms :
- C “In so far as the area concerned, the water shall be drawn only for supply of drinking water. Therefore, there shall be an interim order directing the respondents to strictly act in accordance with G.O.Ms.18 Environment and Forest (FR.10) Department dated 7.3.2008 supplying water only for drinking purpose until further orders of this Tribunal.”
- D 11. This order was modified on 7 July 2017, to the following effect :
- E “Therefore, as an interim arrangement, we modify our order dated 31.5.2017 to the effect that the situation which was in existence before our interim order dated 31.5.2017 shall be continued, however, subject to the condition that the 3rd respondent Board shall closely scrutinise whatever water is required for industrial purpose and also subject to the condition that sufficient quantity of water is available for drinking purpose for the people.”
- F The above arrangement held the field until the proceedings were disposed of by the impugned order.
- G 12. Initially, when this Court was moved in a batch of civil appeals, on 11 January 2019, a grievance was urged on behalf of Tuticorin Thermal Power Plant to the effect that as a result of the order of the Tribunal, serious hardship was faced in its operational activities and that the situation was assuming a critical dimension in the absence of regular supply of water. Accordingly, while issuing notice this Court directed that the order of the Tribunal shall remain stayed insofar as the Tuticorin Thermal Power Plant is concerned, subject to the condition that drinking water needs are fully met. This Court clarified that any supply thereafter of surplus water to the power plant shall be in accordance with the terms H of the interim order (of the Tribunal) dated 7 July 2017, extracted above.

TWAD Board was directed to file an affidavit indicating

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- i) the extent of water which is available for distribution;
- ii) the water which is required to fully meet the drinking water needs; and
- iii) the surplus, if any, that is available.

13. On 28 January 2019, finding that the TWAD Board had not indicated a bifurcation of the requirements of water for drinking and industrial use, this Court called for fresh affidavits on the anticipated requirements for the period between 1 February 2019 and 30 June 2019. An affidavit has been filed on 31 January 2019 on behalf of the Board.

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14. Learned senior counsel appearing on behalf of the Board has drawn our attention to relevant extracts from the affidavit, in support of the submission that even after meeting drinking water requirements fully, there is surplus water available which can be allocated for industrial use. The affidavit indicates that requirement of water for drinking, irrigation and other industrial purposes, in Tirunelveli and Thoothukudi Districts, is met from the water drawn from Tamirabarani River. For that purpose, water is released from three dams, namely, (i) Papanasam Dam; (ii) Servalaru Dam; and (iii) Manimuthar Dam. Paragraph 6 of the affidavit is extracted below :

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“6. The Water Account details as annexed prepared to know the storage position of dams and anticipated Inflow of water from the data obtained form the office of the PWD and Electricity Board as detailed below :-

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i) Expected inflow of water and the storage of water to be used is 10285.60 MCft (31.01.2019 to 30.06.2019)

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ii) Losses due to evaporation and leakages is estimated as 1028.56 MCft

iii) Balance quantity of water is 9257.04 MCft

iv) Water requirement for drinking use from 1.01.2019 to 30.06.2019 (150 days x 167.73 Cusecs x 0.0864) is 2173.78 MCft

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[.0864 is conversion factor from cusecs to MCft]

v) Water required for industrial usage from 31.01.2019 to 30.06.2019 (150 days x 52.27 cusecs x 0.0864) is 742.22 MCft

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vi) Anticipated average release of water from 31.01.2019 to 31.03.2019, 1000 cusecs per day for irrigation (60 days x 1000 cusecs x 0.0864) is 5184.80 MCft

- A vii) Expected inflow and available storage for use of dam on 30.06.2019 is $(9257.04 - (2173.78 + 742.22 + 5184.00)) = 1157.04 \text{ MCft}$ "

15. Accordingly, it has been submitted that the water available in the dams is sufficient to meet the requirement of water for drinking, irrigation and industrial purposes upto 31 March 2019 and for meeting the requirement of water for drinking needs and industrial purposes upto 30 June 2019 in both Tirunelveli and Thoothukudi Districts. The affidavit states that in case there is any shortfall in the expected inflow, it will be compensated with the seasonal rains in the lower part of the dams in Tamirabarani River basin and irrigation tanks, as per the report of the PWD authorities. Finally, it has been stated that if any shortfall arises in the expected inflow of water, the first priority will be given to drinking water requirements.

16. Placing reliance on the affidavit which has been filed by the TWAD Board, Shri Ranjit Kumar and Shri Huzefa Ahmadi, learned senior counsel submitted that it would be appropriate if the stay granted by the Tribunal is modified so as to permit the release of water for industrial purposes, subject to the drinking water needs being fully met. Learned counsel submitted that a blanket stay of the nature which has been issued by the Tribunal will not serve any purpose.

E 17. On the other hand, Ms. Anitha Shenoy, learned counsel appearing on behalf of the first respondent, who is the original petitioner before the Tribunal, submitted a chart containing the data of the Government of India in the Ministry of Earth Sciences (India Meteorological Department), Regional Meteorological Centre, Chennai. Learned counsel submitted that for Thoothukudi District official statistics show that the rainfall as of 31 January, 2019 has been below normal (-100 or as the case may be -92). Moreover, on the basis of the data collated from the affidavit of the Board, it has been submitted that there is a precipitous decline in the current position of water in the reservoirs in Tirunelveli District and in consequence, it would not be appropriate to issue any direction, modifying the direction of the Tribunal.

H 18. We may note that it was urged on behalf of the appellants that the permission which was granted on 7 March 2008 by the State Government for the diversion of 0.055 hectares of land for the construction of an intake well for drinking water purposes, did not contain a prohibition for utilizing the water for industrial purposes. We cannot accept the

submission. Both before the Tribunal as well as before this Court, the consistent position of the State Government as well as of MoEF&CC has been that Government of India delegated its authority under the Forest Conservation Act, 1980 to the states to grant a diversion of forest land upto one hectare and for specified projects of a public utility. Among them is drinking water. Hence, in the face of this position, the submission cannot be accepted.

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19. The position as it now exists is that TWAD Board has moved the State Government with a proposal to seek the clearance of MoEF&CC for the purpose of authorizing the use of the surplus water also for industrial purposes under the Forest Conservation Act, 1980. TWAD Board submitted before this Court that even after meeting the drinking water requirements fully, a surplus of water is available which it may be permitted to utilize for industrial purposes. On the other hand, as we have noted earlier, this is disputed on behalf of the petitioner before the Tribunal who has submitted that there has been a paucity of rain fall, as a result of which, Thoothukudi District has recorded scarcity conditions.

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20. In our view, it would be necessary for this Court to put in place an administrative mechanism that would ensure that a decision to release water for industrial purposes is monitored by the Collector of the District who shall conduct a due verification of the data which is available with the TWAD Board. The Collector should independently assess the situation so as to ensure that the need for drinking water and irrigation is not compromised.

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21. We, accordingly, direct that within a period of one week from today the Collector responsible for Thoothukudi division shall convene a meeting of all the concerned departments, including the Public Works Department, the Irrigation department and the TWAD Board. The Collector shall ascertain whether any surplus water is available after fully meeting the requirement for drinking water. The Collector shall conduct a fortnightly review of the position thereafter to determine as to whether any further direction or modification is required to meet the exigencies of the situation. If the Collector does find that the data which has been produced is adequate to sustain the conclusion in regard to the availability of surplus water after fully satisfying the need for drinking water, directions may be issued for allocating a suitable quantity of water for industrial purposes. We reiterate that this should be without in any manner compromising the present and anticipated drinking water

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- A needs of the residents of the district concerned. Until the Collector takes a decision and for one week from today we restore the position as it obtained under the interim order of the Tribunal dated 7 July 2017 to facilitate the supply of water for industrial purposes, including for the Tuticorin Thermal Power Plant. This is subject to the condition that drinking water requirements are fully met on priority. Thereafter, parties shall abide by the decision of the Collector. Until the Collector takes a decision, the interim order which we have passed in the case of Tuticorin Thermal Power Plant shall also continue in operation.

22. Insofar as the proposal under the Forest (Conservation) Act 1980 is concerned, we are apprised that TWAD Board had forwarded it to the State Government on 11 June 2018. We have been apprised that there were communications between the State Government and the Board with a view to rectifying certain deficiencies in the proposal. Be that as it may, we direct that within a period of two weeks from today, a joint meeting be held of the representatives of the State Government and of the TWAD Board to resolve the issue. The proposal shall thereupon be forwarded to MoEF&CC within three weeks from today. The competent authority shall take a decision on the proposal in accordance with law within a period of two months thereafter. Any allocation of water for industrial purposes in the meantime shall abide by such final decision as may be arrived at by the Union of India after considering the proposal.
- E We have not expressed any opinion on the merits of such a proposal.

23. We dispose of the appeals in the above terms. Pending applications, if any, shall also stand disposed of. There shall be no order as to costs.

Kalpana K. Tripathy

Appeals disposed of