

Voice Of Nature Rep. By Its Secretary M. ... vs The Government Of Tamil Nadu Rep. By Its ... on 31 January, 2022

Bench: K Ramakrishnan, K. Satyagopal

Item No.3:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 231 of 2016 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Voice of Nature
Regn. No.21 of 2014
Rep. by its Secretary,
Mr. M. Sathish Kumar
No.4, Adhigathur Road
Vengathur Kandigai
Manavalanagar, Tiruvallur - 602 002.

...Applicant(s)

Versus

The Government of Tamil Nadu
Rep. by its Secretary,
Department of Environment and Forest,
Fort St. George, Chennai and Ors.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran along with
M/s. C.S. Monica.

For Respondent(s): Dr. D. Shanmuganathan for R1 & R6.
Mr. S. Sai Sathya Jith for R2, R3 & R11 to R13.
Mrs. Madhuri Donti Reddy for R5 & R7.
Mr. V. Sanjeevi along with
Mr. K. Muthukumaraswamy for R4.
Mr. M.R. Gokul Krishnan along with
Ms. Ojas Sivakumar for R9.
Mr. Abdul Saleem and
Mr. S. Saravanan for R10.

Judgment Pronounced on: 31st January, 2022.

Page 1 of 56

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-

Justice K. Ramakrishnan, JM Sd/-

Dr. Satyagopal Korlapati, EM O.A. No.231/2016 (SZ) 31st January, 2022. Mn.

Item No.3:-

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE, CHENNAI
Original Application No. 231 of 2016 (SZ) (Through Video Conference) IN THE
MATTER OF:

Voice of Nature Rep. by its Secretary, Mr. M. Sathish Kumar No.4, Adhigathur Road
Vengathur Kandigai Manavalanagar, Tiruvallur - 602 002.

...Applicant(s) Versus

1) The Government of Tamil Nadu Rep. by its Secretary, Department of Environment
and Forest, Fort St. George, Chennai - 600 009.

2) The Tamil Nadu Pollution Control Board Rep. by its Chairman No.76, Mount Salai
Guindy, Chennai - 600 032.

3) The District Environmental Engineer, Tamil Nadu Pollution Control Board, No.41,
Judges Colony, Periyakuppam, Thiruvallur - 602 001.

4) M/s. Oren Hydrocarbons Private Limited Rep. by its Managing Director Having

5) The Andhra Pradesh Mineral Development Corporation Limited Rep. by its Managing Director, Administrative Building Premises, Rear Block 4th Floor, HMWSSB Premises, Khairatabad Hyderabad.

6) The Government of Tamil Nadu Rep. by its Secretary Commercial Taxes Department Fort St. George, Chennai - 600 009.

7) The Government of Andhra Pradesh Rep. by its Secretary Commercial Taxes Department Hyderabad.

8) The Chief Commissioner of Customs and Central Excise, No.33, Rajaji Salai, Chennai - 600 001.

9) The State Environmental Impact Assessment Authority (SEIAA) - Tamil Nadu Represented by its Member Secretary, Jeenis Road, Saidapet, Chennai.

10) The Tamil Nadu Electricity Board Rep. by its Chairman, No.800, Anna Salai Chennai - 600 002.

11) Mr. R. Umaiyakunjaram District Environmental Engineer Tamil Nadu Pollution Control Board Having Office at Padappai Sriperumbudur, Kancheepuram District.

12) Mrs. Indira Gandhi Presently District Environmental Engineer (i/c) Tamil Nadu Pollution Control Board Maraimalai Nagar, Kancheepuram District - 603 209.

13) Mr. V. Purushothaman Presently Assistant Engineer, Tamil Nadu Pollution Control Board No.41, Judges Colony, Periyakuppam, Thiruvallur - 602 001.

...Respondent(s) For Applicant(s): Mr. A. Yogeshwaran along with M/s. C.S. Monica.

For Respondent(s): Dr. D. Shanmuganathan for R1 & R6.

Mr. S. Sai Sathya Jith for R2, R3 & R11 to R13.

Mrs. Madhuri Donti Reddy for R5 & R7.

Mr. V. Sanjeevi along with Mr. K. Muthukumaraswamy for R4.

Mr. M.R. Gokul Krishnan along with Ms. Ojas Sivakumar for R9.

Mr. Abdul Saleem and Mr. S. Saravanan for R10.

Judgment Reserved on: 18th January, 2022.

Judgment Pronounced on: 31st January, 2022.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER Whether the Judgment is allowed to be published on the Internet - Yes/No Whether the Judgment is to be published in the All India NGT Reporter - Yes/No JUDGMENT Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The grievance in this application is regarding the illegal establishment and operation of the 4th Respondent's barite beneficiation industry without valid Environmental Clearance (EC) under the EIA Notification, 2006 and consent orders from the Tamil Nadu Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

2. It is alleged in the application that the 4th respondent industry is engaged in the business of manufacturing high grade barite, which is used in the oil drilling processes as a weighing agents and supplying it to oil exploring units globally. The industry proposed to establish a barite beneficiation plant at Survey.No.377/1A, 378/1, 383/1A, 1B, 1C, 1D1, 1E, 1F, 1G1, 384/1A at Getnamallee Village, Gummidipoondi Taluk, Thiruvallur District. The mineral (barite) beneficiation process falls under the purview of EIA Notification, 2006 and the industry applied to the State Environment Impact Assessment Authority (SEIAA) - Tamil Nadu for Environmental Clearance (EC). The project activity does not involve mining as the industry proposed to bring the low grade barite from the Andhra Pradesh and reportedly, it has agreement with Andhra Pradesh Mineral Development Corporation Limited who is the 5th Respondent herein for that purpose. The beneficiation process starts with crushing of ores and the crushing process is integral to the beneficiation process which is also visualized from the application submitted by the industry for environmental clearance and the Environmental Clearance (EC) granted by SEIAA. However, the industry in collusion with the Board officials, projected as if the crushing of barite ore is a separate process and treating it for beneficiation as separate unit and defiantly claimed that the unit did not require Environment Clearance (EC), applied for consent orders under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 on 21.08.2014, even prior to filing the application for Environmental Clearance (EC) and the Board, well aware of the pendency of the Environmental Clearance (EC) application process, also entertained such application and granted consent for establishment for 'barite powder manufacturing' unit on 09.10.2014 and subsequently granted consent for operation on 19.02.2016. On 01.09.2014, the

industry had applied for Environment Clearance (EC) to the SEIAA - Tamil Nadu for barite beneficiation plant and the same was granted on 21.12.2015. The application of the industry for Environmental Clearance is also for the process involving crushing and the site for which the consent orders were granted originally in the name of 'barite powder manufacturing' was also the subject matter of Environmental Clearance (EC) before the SEIAA-Tamil Nadu, the 9th Respondent herein. However, without considering these aspects, the Pollution Control Board has granted the consent in violation of the EIA Notification.

3. The SEIAA-Tamil Nadu without evaluation of these facts has mechanically granted ex-post facto clearance to the beneficiation process on 21.12.2015. The Board issued consent orders in the year 2014 in the name of 'Barite Powder Manufacturing' Unit, only to facilitate the industry to establish the beneficiation plant pending the Environmental Clearance procedures and on such courage being offered by the Board, the industry established and commenced its manufacturing processes even prior to the grant of Environmental Clearance and had been in commercial operation. When these things came to the knowledge of the applicant, he made an application to the Board under the Right to Information Act on 28.02.2016, seeking the copy of the application submitted by the industry, inspection reports and consent orders. The Board refused to furnish the copy of the application submitted by the industry and inspection reports quoting that the information contained in the application and inspection reports are confidential information protected under section 8(1) of the Right to Information Act.

4. The 11th Respondent who was the then District Environmental Engineer, Thiruvallur was the Public Information Officer refused the information only to favour the industry to flout the law. The industry in collusion with the 11th Respondent had established the full-fledged beneficiation plant even prior to the grant of Environmental Clearance. Since, Respondents No.11 to 13 have personally involved in the process, they were made as party respondents in the proceedings in their individual capacity. Since the industry had established the unit prior grant of Environmental Clearance (EC), they issued a notice under section 19(b) of the Environment Protection Act on 27.05.2016. However, no action was taken by the Board. Since there was no action taken against the industry, they have made another written complaint to the present DEE, Thiruvallur on 19.08.2016 to stop illegal operation of the 4th respondent unit which was established without the grant of Consent to Establish, and operated without the Consent to Operate. The DEE conducted inspection on 24.08.2016 and found that the industry carried out expanded barite beneficiation activity without consent orders from the Board. The then District Environmental Engineer had issued show cause notices to the industry under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 on 31.08.2016 for such violation and after the show cause notice was issued, the Board issued consent for establishment to manufacture "enriched barite" under the guise of expansion on 16.09.2016 virtually

for the beneficiation plant which is already being established and operated.

The Consent for Establishment (expansion) was issued indirectly to the beneficiation plant under the name enriched barite powder. In fact, it was already established and operating industry and the post facto consent granted has no legal sanctity. Even though, the applicant is constrained to question the grant of clearance of the projects on various environmental destruction aspects, since it is continuing the violation, the applicant is filing the present application without prejudice to the right to question the legality of the consent orders granted by the Board and the Environmental Clearance. They were operating the unit for more than one year without obtaining consent orders as well as prior to the grant of Environmental Clearance (EC).

5. It was claimed by the Board that the barite powder manufacturing industry for which the consent to establishment was granted earlier in the year 2014 is a mere pulverizing unit and does not require Environment Clearance and the beneficiation process alone require Environmental Clearance. However, they have given the Consent to Establish for the industry to utilize the existing machineries installed for manufacturing. The violation is telltale from the inspection report of the Board conducted on 04.07.2016. The reasons given by the Board for granting Consent to Establish is perse illegal.

6. So, the applicant file this Original Application seeking the following reliefs:-

"a. Restrain the 4th respondent from in any manner operating or any further establishing the barite beneficiation plant under the proceedings of the Board dated 16.09.2016 bearing No.T11/TNPCB/F.0604TLR/RL/TLR/W/2016 and T11/TNPCB/F.0604TLR/RL/TLR/A/2016.

b. Restrain the 2nd and 3rd Respondent from in any manner granting/entertaining the application of the 4th respondent any further in respect of its barite beneficiation plant at Survey No. 377/1A, 378/1, 383/1A, 1B, 10, 101, 1E, 17, 161, 384/1A Getnamalli Village, Gummidipoondi Taluk, Thiruvallur District until the illegal establishment is dismantled by the industry.

c. Direct the 1st respondent to initiate prosecution against the 4th respondent industry and its Directors and respondents 11 to 13 for having abetting the establishment and operation of the barite beneficiation plant in violation of the EIA Notification 2006 and without consent orders from the Board under the Water and Air Acts.

d. Direct the 1st and 2nd Respondent to initiate appropriate penal action against the respondents 11, 12 and 13 for facilitating the industry to establish and operate the beneficiation plant without consent orders from the Board.

e. Award cost of this application and thus render justice."

7. Respondents No.2, 3 & 11 to 13 have filed reply affidavit contending that this reply affidavit was sworn by the then Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board on behalf of the Respondents No.2, 3 and 11 to 13 jointly. It was contended that the 4th Respondent unit M/s Oren Hydrocarbons Pvt. Ltd. is located at S.F No. 383/(1E, 1F and 1G1) of Getnamallee Village, Gummidipoondi Taluk, Tiruvallur District. Earlier the unit had applied for Consent to establish for manufacturing of Barite Powder - 8892 T/M. The sequence of process are the raw material barite ore lumps is crushed in jaw crushers, crushed materials poured in elevated hopper and is transported through electromagnetic vibrating feeder to the grinding mills [Raymond Mill] for grinding. After grinding, the same is collected and packed. Since the activity is only crushing of barite ore lumps and there is no mineral beneficiation, it does not attract EIA Notification, 2006. There was no trade effluent generated from its process. The location of the site is classified as General Industrial Use zone by DTCP vide its letter dated 06-08-2014. Since the unit's activity falls under Red-Small-1017- industries involving pulverization (including ore), the subject was placed before the ZLCCC at its meeting held on 29.09.2014 and the Consent for Establishment under the Water(P&CP) Act, 1974 and Air (P&CP) Act, 1981 was issued vide Board's Proceeding dated 09/07/2014. After completion of construction and erection of machineries, the 4th Respondent unit had applied for Consent to Operate on 12.02.2016 and the same was placed before the ZLCCC meeting held on 17-02-2016 and Consent to Operate under both Acts was issued vide Board's Proceeding dated 19-02-2016 with the validity up to 31-03-2017. Subsequently, one Thiru. V.Gopi, Periyapalayam, Uthukottai has filed an appeal before the Appellate Authority challenging the above said consent order issued to the 4th Respondent unit. The Appellate Authority in its order dated 12.04.2016, closed the appeal stating that the unit had obtained Consent to Operate for the above activity and the appellant therein has not established the fact that he was an aggrieved person. In the meantime, the unit has applied for Environmental Clearance from SEIAA for its expansion proposal to set up a Barite beneficiation plant - 96900 TPM from low grade barite ore lumps in the same premises, since ore mineral beneficiation comes under item 2[b] of Category 'B' EIA notification 2016. Based on the Terms of Reference issued by the SEIAA on 17-10-2014, Public Hearing was conducted on 15-05-2015 and the minutes were forwarded to SEIAA. Environmental Clearance to the 4th Respondent unit was also issued by the SEIAA on 21.12.2015. With the above Environmental Clearance issued by the SEIAA, the unit has applied for consent for Establishment for expansion to the Board on 27-04-2016. In the mean time a complaint was received from Voice of nature dated 19.08.2016, the applicant herein stating that the unit had established the ore beneficiation plant without obtaining Consent to Establish and Consent to Operate from the Board and requested for appropriate action against the unit. Based on it, the unit was inspected by the officials of the DEE - TNPCB, Thiruvallur on 24.08.2016. During inspection, it was noticed that the unit has established the expansion activity of ore beneficiation plant. However, it has applied for Consent to Establish for expansion and the issue of same was in progress. A show cause notice was issued to the 4th respondent unit vide Board's Proceedings dated 31.08.2016 for establishing the ore beneficiation plant without obtaining Consent to Establish from the Board. Subsequently, Consent to Establish for Expansion was issued to the 4th Respondent unit vide Board's Proceedings dated 16.09.2016. The unit has furnished its reply for the said show cause notice on 24.09.2016, which is self explanatory. Now the unit has applied for Consent to Operate - Expansion through online and the same was returned for want of additional details/documents and as such, the unit operates only with grinding of Barite powder and no ore beneficiation process was carried out. So, they prayed for

accepting their contentions and passing appropriate orders.

8. The 4th Respondent has filed a counter affidavit contending that the application is not maintainable. The Applicant Association is not a person, who has sustained the injury or is a person aggrieved by the activities of the respondent Company to maintain the instant application before this Hon'ble Tribunal under Section 18 of the National Greens Tribunal Act, 2010. There is nothing mentioned in the application that he had sustained injury and any of the members of the association had suggested any injury on account of the operation of the unit by the 4th Respondent and as such, the application is not maintainable. The establishment of the 4th Respondent factory is situated 40 Kms away from the place where office of the association of the applicant is situated. The respondent company was incorporated in the year 1990 to cater to the Oil & Gas Exploration Unit through the supply of high quality specialized drilling chemicals and mud chemicals. They are having a similar manufacturing / crushing factory at Kodur, Kadappa District, Andhra Pradesh for pulverising the Barite. Andhra Pradesh Mineral Development Corporation Limited (APMDC) is having mining lease over an extent of 162.59.0 Hectares in Mangampet Village, Obulavaripally Mandal, Kadappa District, Andhra Pradesh. The respondent company is purchasing unprocessed raw Barite i.e., Barite Ore lumps - A & B grade from Andhra Pradesh Mineral Development Corporation (APMDC), Mangampet, Kadappa District, Andhra Pradesh to pulverise the Barite and for export. The product is being used in oil drilling locations as weighting agent. This is also used as a weighing agent in drilling mud. The respondent company is the absolute owner of the land comprised in S.F. Nos. 377/1A2, 378/1, 378/2, 383/1A, 383/1B, 383/1C, 383/1D1, 383/1D2, 383/1E, 383/1F, 383/1G1, 384/1A measuring an extent of 16 Acres 95 cents equivalent to 6.85.50 Hectares in Getnamallee Revenue Village, Gummidipoondi Taluk, Tiruvallur District. This area has been classified as General Industrial use. The area where the factory of the respondent is located is surrounded by several industries viz., Bhatia Coal & Energy (Power Plant), Suryadev Alloys and Power Pvt. Ltd (Thermal Power Plant), Cauvery Power Generation Chennai Pvt. Ltd (Thermal Power Plant), Surana Industries Ltd, SRF Ltd, Hi-Tech Carbons, Apollo Distilleries Ltd, Caplin Point Laboratories Ltd (Pharmaceutical Company) and Akshaya Industries. The SIPCOT Industrial Estate is also situated adjacent to these Industries. Initially, this Respondent had established the pulverizing unit (crushing unit) in the above said land comprised in S.F. Nos. 383/1E, 383/1F & 383/1G for crushing the Barite Lump (A & B Grade) for exporting them to the foreign countries through their Kodur factory, Kadappa District, what is exported is the Barite powder after crushing the A & B Grade Barite Ore lumps in the Kodur factory and the factory at Getnamallee Village, Gummidipoondi Taluk. This process did not require beneficiation, as it requires only a pulverising activity (Dry process). This Respondent company had also intended to establish the Beneficiation Plant to beneficiate low grade Barite i.e. C & D grade and waste grade by purchasing them from A.P. Mineral Development Corporation Limited (APMDC), which is a wet process. This plant is for beneficiation of low grade Barite through a new Technology called "Column Flotation Technology". Raw materials A, B grade Barite Ore and low grade Barite C and D grade barite are to be obtained only from the above said corporation. They are also having supply of A & B grade Barite Ore lumps from the above corporation for the Barite powder manufacturing (for crushing activity / pulverizing) for the Kodur factory in Andhra Pradesh and the factory at Getnamallee Village, Gummidipoondi Taluk, Tiruvallur District. Crushing done in the Gatnamallee Plant is the materials, i.e. A,B grade barite ore lumps obtained from this respondent's factory at Kodur, A.P. The final product - Barite powder after

pulverising is being exported from Kodur unit. There was no local sales and all the Barite powder are for export. Pursuant to the application filed by the respondent dated 21.8.2014, for establishing the pulverizing unit at Getnamallee Village, the District Environmental Engineer of Tamil Nadu Pollution Control Board - Tiruvallur, by proceedings dated 09.10.2014 granted Consent to Establish by their Consent Order No. 464 for this purpose under The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. After installation of the machineries, pursuant to the application of the Respondent dated 12.2.2016, the District Environmental Engineer of Tamil Nadu Pollution Control Board -Tiruvallur by their Proceedings dated 19.02.2016 vide Consent Orders No. 160414021897 and 160424021897 granted consent to the Respondent to operate the above pulverizing unit (crushing unit) for the purpose of producing Barite powder for the quantity of 8892 Metric Tonnes per month under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. After getting orders of consent to operate from the Pollution Control Board, they have started to operate the pulverizing unit (crushing the Barite Ores of A & B grade) after 19.02.2016. In order to establish the Beneficiation of Barite Ore by Column Flotation Technology Plant to beneficiate low grade Barites - C, D and waste grade Barites to bring upto equivalent to the level of A & B grade, in the above said land bearing S.F. Nos. 383/1A, 1B, 1C, 101, 1E, 1F, 1G1 and 384/1A, they applied for Environmental Clearance (EC) to the State Environment Impact Assessment Authority (SEIAA), Chennai on 28.08.2014 for production is 96,900 tonnes per year, which is less than 1 million. As per the EIA Notification, 2006, production of less than one million tonne annual mineral throughout falls under Category-B, Schedule-2(b) and State Environmental Impact Assessment Authority (SEIAA) is empowered to grant Environmental Clearance. Public hearing was conducted on 15.05.2015 under the leadership of the District Collector - Tiruvallur for this project at Getnamallee Village on 15.05.2015. In the 68th Meeting of State Level Expert Appraisal Committee held on 27.10.2015, the committee decided to recommend the project for issue of prior Environmental Clearance by SEIAA and the State Environmental Impact Assessment Authority (SEIAA) after careful consideration, decided to issue Environmental Clearance in their 149th Meeting held on 21.12.2015. The Environmental Clearance dated 21.12.2015 was communicated to the respondent. They established the pulverizing unit for crushing the A and B grade Barite Ore lumps for the Barite powder, which are fit for export without any further processing. With a view to process or beneficiate the Low grade Barite Ore lumps (C & D grade), they proposed to establish the Beneficiation Plant. The beneficiation need not start with crushing of Ores in the factory on all occasion. They are having similar crushing factory at Kodur, Andhra Pradesh. So, they could get the crushed Ores from Kodur factory for beneficiation at the proposed Beneficiation Plant at Getnamallee and it is a wet process. The crushed Ores are fed in solid form into slurry preparation tank where the beneficiation would start and the chemical process is involved. The crushed Ores can also be brought from outside or / and taken from pulverizing unit adjacent to the proposed Beneficiation Plant and the Pulverizing activity does not require Environmental Clearance (EC) Clearance. On the basis of the Environmental Clearance (EC) dated 21.12.2015, they applied for Consent to Establish under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 on 02.5.2016 for this Beneficiation Plant. The District Environmental Engineer of Tamil Nadu Pollution Control Board - Tiruvallur had inspected the factory on 23.5.2016 and appeared to have recommended for grant of Consent to Establish to the Beneficiation Plant. Thereafter, they got some machineries for installation for the Beneficiation

Plant and started to install the machineries on the bonafide hope that they would get formal consent orders of Consent to Establish, as they already obtained Environmental Clearance (EC) for the same. By proceedings dated 16.09.2016, the Member Secretary - Tamil Nadu Pollution Control Board gave Consent for Establishment for expansion i.e., Beneficiation Plant under both Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The applicant approached the Pollution Control Board Authorities complaining that this Respondent had established and started operation of the Beneficiation Plant without consent of the Board. But they have not started the production from the Beneficiation Plant. The raw materials for the Beneficiation Plant is the low grade Barite Ore lumps which are yet to be obtained from the Andhra Pradesh Mineral Development Corporation Limited (APMDC), the only supplier and that was still pending with them. No low grade lump was crushed in the factory for beneficiation. The question of production of Barite powder from the Beneficiation Plant did not arise at all. They have not completed the installation of the machineries in full at that time. The inspection report of the D.E.E. dated 31.08.2016 pursuant to inspection to the unit on 24.08.2016 extracted by the applicant was not correct. Copy of the report had not been furnished to the respondent. The sanctioned existing 405 KV electricity supply is available for the existing pulverizing unit as of now. The additional KV (i.e. 225 KV) has to be obtained from TANGEDCO. So, the allegation that they have started production without obtaining necessary consent is not correct. They also extracted the inspection report of DEE of Tamil Nadu Pollution Control Board dated 04.07.2016 for beneficent plant as detailed below:

"Existing: Manufacture of Barite powder from Barite ore lumps by crushing process. No chemical treatment is carried out.

BENEFICIATION: The finely ground solids of Barite from the Pulverizer is conveyed to the Silo from which the solids are drawn through a belt weight feeder and fed to Slurry preparation tank. Measured quantity of water will be added to the tank in order to prepare slurry with the desired pulp density. The prepared slurry is ready to be fed to Conditioner Tank - 1.

In Conditioner Tank - 1, pH of slurry is controlled by adding required quantity of NaOH if required. The slurry then overflows to Conditioner Tank-2 where reagents are added as required for the Floatation process. The conditioned slurry from Conditioner Tank-2 is pumped to the Column Flotation Cell and fed near the top of Column Flotation Cell. Air at required quantity and pressure is fed at the bottom portion of the column through "spargers". These spargers are made of specially designed porous material which results in the generation of fine air bubbles which then rise towards the top of the column. As the reagent coated solid particles in the feed slurry drops towards the bottom of the Cell, it passes through the bubbles rising from bottom. The tails attaches itself to the bubbles and overflows from the top of the Cell and Barite settles at the bottom of the cell and is extracted by an automatic discharge valve. Operation of the Column Flotation Cell is completely automated.

The Baryte concentrate extracted as underflow of the Column Flotation Cell is fed to the High Rate Thickener by slurry pump and the overflow (Froth) from the Column Launder is taken to the Tails pond by froth pump and transferred to Secondary Thickener.

At High Rate Thickener, the Solid settles at the bottom to form thickened slurry and is extracted from underflow nozzles and then pumped to the Holding tank. Slurry from Holding tank is pumped by Filter feed pump to the Filter where cake is formed and passed to the Dryer for further removal of moisture and the squeezed out water (Filtrate) is collected in a tank and then flow by gravity to High Rate Thickener feed box. The clarified water collected from the Thickener overflow is sent to the process water tanks and is re-circulated to the plant. After Dryer the product is sent to the packing area for packing and storage."

9. The report will go to show that the Beneficiation Plant and crushing units are having different process and not one and the same. So, the assumption of the applicant that both require Environmental Clearance (EC) is not correct. Even as per the allegations made in the application, beneficiation plant had not been started. They are also operating the pulverizing unit which does not require any Environmental Clearance (EC). They had given the reason for installation of machineries in their reply dated 20.09.2016 to the show cause notice dated 31.08.2016 issued by the Pollution Control Board. The Consent to Establish to the expansion activity i.e., Barite Beneficiation Plant was issued on 16.09.2016 whereas, the show cause notice received by the respondent was on 19.09.2016. Manufacturing "Enriched Barite" (lower grade to higher grade) is Beneficiation. The Consent to Establish is for the Beneficiation Plant and not for the pulverisation plant. After getting the reply and necessary documents, Consent to Establish and other consents were granted by the Pollution Control Board. So, the allegations in the application are not correct and the applicant is not entitled for any of the reliefs claimed in the application and they prayed for dismissal of the application.

10. The 9th Respondent/SEIAA - Tamil Nadu filed a counter contending that the project proponent M/s. Oren Hydrocarbons Pvt. Ltd., sought prior Environmental Clearance from SEIAA by filing application in Form-I and Pre-feasibility report dated 28.08.2014 for the proposed project Beneficiation of Barite Ore by Column Floatation technology under Category B and Item No 2(b), Mineral beneficiation of Schedule - 1 of EIA Notification 2006. The proposed capacity was for throughout capacity - 96900 TPA of High grade Barite (Specific gravity above 4.20,[No mining activity], at S.F.No. 383/1A,1B,10,1D1,1E, 17,1G1,384/1A, Getnamallee village, Gummidipoondi Taluk, Tiruvallur District. The site is located in an area classified as General Industrial Area by DTCP. The project cost is Rs.7.6 crores. The total land area for the project is reported to be 28324.12 Sq.mt (2.83 ha) with built up area of 10249.331 sq.mt, the Green Belt area is 9346.92 sq.mt. The process involving enriching the Concentration of barite by (Beneficiation) process is only covered under the EIA Notification 2006 under item No 2(b) - Mineral Beneficiation (<0.5 Million TPA). The Environmental Clearance (EC) was issued by SEIAA- Tamil Nadu vide Letter No. SEIAA-TN/F.No 2896/2015/EC-34/2015 dated 21.12.2015, for barite beneficiation of throughout capacity 96900 TPA (no mining activity). The Environmental Clearance (EC) was granted on the basis of the

Form-I Application, Pre-Feasibility Report & after issue of TOR, Appraisal of EIA Report submitted along with Public Hearing Minutes & pertinent documents submitted and also by following the procedure under the EIA Notification 2006. Barite is extensively used as drilling mud in oil industry because of its high specific gravity, inertness to acids, low solubility in water and low cost. The other applications are offshore oil and gas exploration, Paint, Glass and Rubber industries. In the manufacturing process the raw material of low grade barite of Specific Gravity 3.5 - 3.9 will be beneficiated by Column Floatation technology. The raw materials are low grade barite and bio degradable reagent. The low grade barite is subjected to crushing in Jaw Crusher, Grinding in mill and sent to silo. Then Slurry is prepared and taken to the Froth floatation process. The Barite concentrate from under flow of Column Floatation cell is fed to High Rate Thickener. The product so obtained by this process is further subjected to drying, and after obtaining desired quality of product (Specific Gravity of 4.2) is sent for packing and storage. The total water required is 1870 KLD out of which, total fresh water requirement is 67 KLD and the total process water taken for Re- use is 1803 KLD. Out of 67 KLD, Industrial water is 22 KLD, Dust Suppression is 6KLD, Green belt is 36KLD and Domestic is 3KLD. No Trade Effluent will be discharged in the process. The waste water generated from the tailings will be completely recycled in the process, hence no ETP is proposed. Domestic sewage waste is to be treated and disposed through Septic Tanks - 4.1m x 1.4m x 2.1m of 2 nos. & Soak Pit. The Municipal Solid waste of 10kg/day will be disposed through local body. The Tailings-(rejected silica) is 1,475 TPM. The rejected silica such as tailings will be stored temporarily (3-4 Days) in the tailing pond. The Tank includes two chambers, each with dimensions 16m x 6m x 3m. The total capacity of the tailing pond is 600 Tons. The tailings so collected will be sent for back filling of mines. The Hazardous Waste- Waste oil from DG set of 0.2 KL/Year will be sent to TNPCB authorized vendors as per hazardous waste rules. The project proposal was placed in the 60th SEAC meeting held on 25.09.2014 and TOR was issued vide Lr. No. SEIAA-TN/F-2896/TVLR/M-LX/TOR-189/ 2014/dated 17.10.2014. The Tamil Nadu Pollution Control Board conducted the Public Hearing on 15.05.2015 at the project site. The Minutes of the public hearing was submitted on 11.06.2015. The final EIA Report was appraised in the 67th SEAC meeting held on 25.09.2015 and the proponent was asked to make representation in the next SEAC meeting with additional details. The subject was again placed in the 68th SEAC meeting held on 27.10.2015 and recommended to SEIAA for considering the proposal. The SEIAA considered the proposal in their 149th Meeting held on 21.12.2015 and resolved to issue Environmental Clearance (EC) and issued the Environmental Clearance (EC) was issued vide Letter No. SEIAA-TN/F.No.2896/2015/EC-3/2015 dated 21.12.2015 with seven years validity, subject to the general conditions and special conditions which includes the SEIAA - TN may cancel the Environmental Clearance granted to this project under the provisions of EIA Notification 2006, if any stage of the validity of this Environmental Clearance, if it is found or if it comes to the knowledge of this SEIAA-TN that the project proponent has deliberately concealed and/or submitted false or misleading information or inadequate data for obtaining the Environmental Clearance. So, they contended that they had considered all the aspects and as such, there is no merit in the application. They prayed for dismissal of the application.

11. The 11th Respondent filed counter affidavit more or less reiterating the contentions raised by the Respondents No.2 and 3 and also by the 9 th Respondent in their respective counter affidavit. They have further contended that they have granted the Consent to Establish as well as Consent to

Operate strictly in accordance with law.

12. The 12th Respondent filed counter affidavit more or less reiterating the process involved in the beneficiation of barite ore. The Ministry of Environment, Forest and Climate Change, Government of India vide their Circular No. J-11013/41/2006-IA.JI(1) dated 22nd September, 2008 had clarified that crushing and screening (sizing of ore) without upgrading of quality of ore is not covered by the provisions of the EIA Notification, 2006. It is also informed that clearance under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981 as may be applicable to such projects should be obtained and there is no trade effluent generated from the said process. For pulverisation unit, the application was placed before the ZLCCC meeting held on 29.09.2014 and the Consent for Establishment under the Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 was issued vide Board's Proceeding dated 09.10.2014. After completion of construction and erection of machineries, the 4th respondent unit had applied for Consent to Operate on 12.02.2016 and the same was placed before the ZLCCC meeting held on 17.02.2016 and Consent to Operate under the Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 was issued vide Board's Proceeding dated 19.02.2016 valid up to 31.03.2017. Thereafter, one V.Gopi, Periyapalayam, Uthukottai has preferred an appeal before the Appellate Authority challenging the above said Consent to Establish order issued to the 4th respondent. The Appellate Authority by Order dated 12.04.2016 closed the appeal stating that the unit had obtained Consent to Operate for the above activity and the appellant had not established the fact that he was an aggrieved person by such activity. Thereafter, on the basis of the application for Environmental Clearance (EC) filed by the 4th Respondent for their beneficiation project, public hearing was conducted on the basis of the ToR issued on 15.05.2015 and the Minutes was forwarded to the SEIAA and later, the SEIAA had granted the Environmental Clearance (EC) to the 4th Respondent on 21.12.2015. Based on that, the 4th Respondent had applied for Consent to Establish for expansion to the Board on 27.04.2016. In the meantime, a complaint was received from the applicant dated 19.08.2016 stating that the unit had established the ore beneficiation plant without obtaining Consent to Establish or Consent to Operate from the Board and sought for appropriate action against the unit. The unit was inspected on 24.08.2016 and during inspection, it was revealed that the unit has established the expansion activity of ore beneficiation plant. However, it has applied for Consent to Establish for expansion and the issue of same was in progress. So, a show cause notice was issued to the 4th respondent unit vide Board's Proceedings dated 31.08.2016 for establishing the ore beneficiation plant without obtaining Consent to Establish from the Board. Subsequently Consent to Establish for Expansion was issued to the 4th respondent unit vide Board's Proceeding dated 16.09.2016. The unit had furnished their reply to the said show cause notice on 24.09.2016, which was self-explanatory. The unit has applied for Consent to Operate (Expansion) through online and the same was returned for want of additional details/documents. Since the activity of the unit is only crushing, no Environmental Clearance (EC) is required and they required only Consent to Establish and Consent to operate which they have obtained. They also reiterated the process of beneficiation and the cost involved for the project as contended by the project proponent.

13. The 1st Respondent filed a counter statement adopting the counter filed by the 2nd Respondent.

14. The 13th Respondent also filed a statement more or less reiterating the contentions raised by the Respondents No.2 & 3 in their counter statement.

15. The applicant filed rejoinder to the reply submitted by the 4 th Respondent more or less reiterating their contentions raised by them in the original application and denying the explanation given by the project proponent in their counter affidavit. They also reiterated that during the pendency of the complaint, Consent to Establish and Consent to Operate were granted.

16. When the matter was taken up on 22.01.2020, the learned counsel appearing for the Tamil Nadu Pollution Control Board submitted that Consent to Operate granted to the 4th Respondent unit expired on 31.03.2018 and the unit had applied for renewal during July-2018 and the same was returned for want of certain particulars. Thereafter, it was not resubmitted and an inspection was conducted on 21.01.2020 and at that time, the unit was not functioning.

17. The learned counsel appearing for the 4th Respondent unit also submitted that the application for renewal for Consent to Operate was under the consideration of the Pollution Control Board and since it is subjudice before the Tribunal, Pollution Control Board is not taking any action due to the pendency of the application before the Tribunal. Thereafter, this Tribunal had directed the Pollution Control Board to consider the application for renewal, if it is in order and dispose of the same in accordance with law and they can also take action against the unit in accordance with law, if there is any violation found.

18. As directed by this Tribunal, the Tamil Nadu Pollution Control Board had sent a report by e-mail dated 17.06.2020 which was considered by this Tribunal by order dated 17.06.2020 and extracted in Para (4) of the order which reads as follows:-

1. It is respectfully submitted that in pursuance to the above said order, the unit was inspected on 12.05.2020. During inspection, the following were observed:

(i) The unit was not in operation. It has neither operated the ore grinding operation nor the beneficiation plant. It was informed that the unit was not in operation for want of raw material and due to summer management issues.

(ii) The unit has erected the machineries like slurry preparation column, flotation cell, high rate clarifier, filter press & rotary driers required for enrichment of barite powder in the existing high grade barite powder grinding plant by providing additional shed.

(iii) The unit has provided 2 set of collection cum setting tanks with three compartments each for collection & setting of tailing water. The same is proposed to be recycled in the process by closed circuit loop system.

(iv) The unit has additionally provided impervious concrete platform to hold and dry the sludge collected from the above collection cum setting tanks.

(v) The settled and dried sludge is proposed to be sent back to the ore minds located in Andhra Pradesh after getting necessary permission from the mining Authority. For which the unit has been requested to furnish an agreement with the mining authorities to refill the mines with the sludge generated from the process before the operation of the plant.

(vi) APC measures attached the process equipment were in place.

(vii) The unit has furnished production statement from which is noted that the unit has stopped production since January 2018. During January 2018, it was reported that the unit has carried out trial production.

(viii) The unit has furnished report for AAQ and ANL survey conducted on 28.01.2020 by Private Laboratory from which it is reported that the observed values are within the standards prescribed by the Board.

(ix) CTO expansion has been issued to the unit with validity up to 31.03.2020.

It is further submitted that the unit has resubmitted its application of renewal of consent for the period up to 31.03.2021 through on line i.d.No. 31637258 dated 24.02.2020 which is further resubmitted on 08.05.2020 and the same was returned for want of the following particulars:

(i) It was observed that the unit has not submitted the copy of the latest Audited Balance Sheet Showing the Gross Fixed Assets (GFA) without depreciation of the unit as stipulated for Red Large Industries, but the unit has uploaded the auditor certificate. Also the unit shall remit Rs. 2, 28,520/- towards balance amount of consent fee.

(ii) Also the unit was requested not to resume its production without obtaining valid renewal consent order of TNPC Board.

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) at Chennai may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice."

19. After considering the same, this Tribunal had passed the following order:-

"5. It may be mentioned here, that in the report it is only mentioned that the unit is not operating since January 2018, but they have not mentioned as to whether they are having the necessary consent to operate which even according to them expired on 31.03.2020. Further without conducting inspection at the time when the unit was in operation, it cannot be said that they are complying with the norms.

6. Though, it was mentioned in the report that the dry sludge was collected and deposited in a settling tank on the platform constructed it is not mentioned as to the extent of sludge available and whether the sludge is being removed as per the conditions of the consent to operate and whether it exceeds the limit provided as per the rules and if so, what is the action taken by the Pollution Control Board in this regard.

7. It is also mentioned in the report that though the unit has submitted for renewal of consent to operate up to 31.03.2021, the same has been returned for certain defects and it has not been represented and not considered by the Board so far. Without getting further report it is not possible to dispose of the case effectively.

8. Considering the circumstances, we feel it appropriate to grant two more months time to the Pollution Control Board to inspect the unit again and submit a proper report regarding the things mentioned above before this Tribunal or before 09.09.2020 through e-mail or e-filing at ngtszfilng@gmail.com.

9. The respondent who have not filed reply statement so far are directed to file the statement before the next hearing date and complete the pleadings so that the matter can be heard and disposed of on merits on the basis of the reports filed by the Pollution Control Board."

20. On 09.09.2020, this Tribunal had considered the copy of the letter said to have been filed and sent by the District Environmental Engineer of Tamil Nadu Pollution Control Board to the Member Secretary, Tamil Nadu Pollution Control Board in pursuant to the directions of this Tribunal by order dated 17.06.2020 regarding further action taken and the same was extracted in Para (3) of the order which reads as follows:-

"TAMIL NADU POLLUTION CONTROL BOARD From To
Dr.P.Kamaraj,M.Tech,Ph.D, The Member Secretary District Environmental Engineer
Tamil Nadu Pollution Tamil Nadu Pollution Control Board Control Board EPIP
Building (A.O Block) 76, Mount Salai SIPCOT Industrial Complex Guindy
Gummidipoondi, Chennai 600 032.

T i r u v a l l u r D i s t r i c t 6 0 1 2 0 1
Lr.No.F,GMP-0041/DEE/TNPCB/GMP/2020dated:08.09.2020 Sir, Sub:
TNPCB-O/o DEE-Gummidipoondi - M/s. Oren Hydrocarbons PVT Ltd (UNIT II),
S.F. No.383/{1F, 1E, 1G1. 1D1, 1D2 and 1C}, 377/1A2,378/[1 and 2], Getnamalli
Village, Gummidipoondi Taluk, Tiruvallur District-Status report submitted- Reg.

Ref: Application No.231 of 2016(SZ) before the Hon'ble National Green Tribunal (SZ)
Chennai vide order dated 17.06.2020 ***** With reference to the Court Case vide
Original Application No. 231 of 2016 (SZ) filed before Hon'ble NGT (SZ) by Voice of
Nature represented by its secretary Thiru. M. Sathishkumar against the unit of M/s.

Oren Hydrocarbons PVT LTD(Unit-II) which is located at S.F.No.383/{1E.1F and 1G1}, Getnamalle Village, Gummidipoondi Taluk, Tirivallur District, the following report is submitted.

Base on the hearing on the said Court Case the Hon'ble NGT (SZ) vide order dated 17.06.2020, it has been stated that "the dry was collected and deposited in a settling tank on the platform constructed it is not mentioned as to the extent of sludge available and whether the sludge is being removed as per the conditions of the consent to operate and whether it exceeds the limit provided as per the rules and if so, what is the action taken report by the Pollution Control Board in this regard."

"Considering the circumstances, we feel it appropriate to grant two more months time to the Pollution, Control Board to inspect the unit and again and submit a proper report regarding the things mentioned above before this Tribunal or before 09.09.2020."

In this regard, it is submitted that that unit was issued CTO (Expansion) vide Board's proceedings No. T7/TNPCB/F.0604TLR/RL/ TLR/W&A/2017 dated: 01/06/2017 valid up to 31.03.2018 subject to certain conditions inter-alia, "Additional condition 4: The unit shall dispose the silica waste to be generated as solid waste from the process to the barite ore mining site as land filling".

In this regard, the unit's authorities were called for discussion on 03/08/2020 so as to discuss the effort made by the unit to comply with the above said condition. Based on which the unit has furnished letter dated 07/08/2020 that the unit had undertaken trial production of 320MTs of Enriched Barite Powder during the year 2017-18 and out of which 48MTs of silica waste had been generated and the same is proposed to be disposed to local cement Bricks manufacturing unit M/s. Amma Fly Ash Bricks & co located at Survey No. 212/19A, Sithiraja Kandigai village, Gummidipoondi Taluk and sample bags were reported to be handled for testing and trial purpose.

In the meantime, the unit was again inspected on 06/08/2020 and the following were noticed

1. The unit was not in operation.
2. The unit has cleaned the impervious concrete platform to dry the sludge (non-hazardous silica waste) collected from the above collection cum settling tanks.
3. The unit has stored 48MT of dried sludge with tarpaulin coverage (Photographs enclosed) In view of the above, Recommendations were submitted to the Board vide this office inspection report dated 29/08/2020 to consider the issue of renewal of consent under Water (P & CP) Act, 1974 as amended and Air (P & CP) Act, 1981 as amended to the unit for the period up to 31.03.2021 subject to the certain conditions as stated therein. The application is under process.

This is submitted for favour of kind information and further action please.

Sd/-

District Environmental Engineer, Tamil Nadu Pollution Control Board, Gummidipoondi."

21. Thereafter, this Tribunal had passed the following order:-

"4. It is seen from the copy of the letter that the unit was not in operation. They have cleaned the impervious concrete platform to dry the sludge (non hazardous silica waste) collected from the above collection cum settling tanks and they have stored 48MT of dried sludge with tarpaulin coverage.

5. It is also mentioned that the application filed by the 4th respondent unit for renewal of consent is under process.

6. It is not clear from the letter as to whether the quantum of silica waste kept namely, 48MT is within the permissible limit of stacking as per the earlier condition of consent to operate and what further action taken need to be by the Pollution Control Board, if there is any violation on the part of the unit, besides closure of the unit for non obtaining the renewal. Merely the unit is not functioning alone is not sufficient. The Pollution Control Board is expected to ascertain as to whether all the recommendations made by the Pollution Control Board have been fully complied with by the 4th respondent unit and there was no possibility of any pollution being caused on account of silica waste generated in the present condition. Unless these things are explained by the Board, it cannot be said that they have complied with the directions issued by this Tribunal.

7. So, under such circumstances, we direct the Pollution control Board to file a further status - cum action taken report for non compliance of the conditions imposed in the consent to operate by the 4th respondent which includes consideration of imposing any environmental compensation for the violation committed by the 4th respondent unit, on or before 28.10.2020 by e- filing to this Tribunal along with necessary hard copies as per rules."

22. On 09.03.2021, this Tribunal had considered the further report submitted by the Tamil Nadu Pollution Control Board dated 23.02.2021, e-filed on 04.03.2021 and extracted in Para (4) of the order which reads as follows:-

"REPORT FILED ON BEHALF OF THE 2ND, 3RD AND 11TH TO 13TH RESPONDENTS - TAMILNADU POLLUTION CONTROL BOARD.

I, G. Gopalkrishnan, Son of Thiru.V. Gandhi, Hindu, aged about 58 years, having office at No. 76, Mount Salai, Guindy, Chennai-600 032, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-32 and I am filing this Reply Affidavit on behalf of the 2nd , 3rd and 11th to 13th respondents Board and as such I am well acquainted with the facts of the case from the records.

2. It is respectfully submitted that, the Hon'ble NGT (SZ) vide order dated 09.09.2020 and directed that:

"Para 6. It is not clear from the letter as to whether the quantum of silica waste kept namely, 48MT is within the permissible limit of stacking as per the earlier condition of consent to operate and what further action taken need to be by the Pollution Control Board, if there is any violation on the part of the unit, besides closure of the unit for non obtaining the renewal. Merely the unit is not functioning alone is not sufficient. The Pollution Control Board is expected to ascertain as to whether all the recommendations made by the Pollution Control Board have been fully complied with by the 4th respondent unit and there was no possibility of any pollution being caused on account of silica waste generated in the present condition. Unless these things are explained by the Board, it cannot be said that they have complied with the directions issued by this Tribunal.

Para 7. So, under such circumstances, we direct the Pollution Control Board to file a further status - cum action taken report for non-compliance of the conditions imposed in the consent to operate by the 4th respondent which includes consideration of imposing any environmental compensation."

3. It is further submitted that the Hon'ble NGT has passed order dated 28/10/2020, has stated that "...We have also mentioned in the order that there is nothing mentioned about the outcome of the renewal application submitted by the 4threspondent and whether the quantum of silica waste kept there was within the permissible limit of stacking as per the earlier condition of consent to operate and what was the further action taken by the Board, if it was a violation on the part of the unit, besides closure of the unit for non obtaining the renewal and also ascertain as to whether all the recommendations made by the Pollution control have been fully complied with by the 4th respondent unit and there was no possibility of pollution being caused on the account of silica waste generated in the present condition and posted the case to today for filling further report specifying these aspects...."

4. It is respectfully submitted that the unit was issued CTO (Expansion) vide Board's proceedings No T7/TNPCB/F.0604TLR/RL/TLR/W&A/2017 dated: 01/06/2017 valid upto 31/03/2018 subject to certain conditions inter-alia, Additional Condition No 2. The unit shall comply with all the conditions stipulated in the Environmental Clearance issued to the unit vide Letter No.: SEIAA-TN/F.No.2896/2015/EC- 34/2015/dated 21/12/2015.

And as per EC condition: Specific Condition No xix) Tailings Residue or any type of solid waste rejects shall be taken back to Andhra Pradesh Mines (APM) for the landfill as committed with a

Permission letter from APM and other requisite compliances. "Additional condition 4: The unit shall dispose of the silica waste to be generated as solid waste from the process to the barite ore mining site as land filling"

In this regard, the unit has furnished letter dated 23/10/2020 stating that the unit has cleared 48T of Silica Waste to the end-user M/s Jai Sai Traders, Manufacturers of cement and Ash Bricks located at Nagari, Andhra Pradesh. The unit has also furnished agreement dated 22/10/2020 executed with the said end-user and delivery challan. Based on the unit's letter dated 23/10/2020 regarding disposal of silica waste sludge, the unit was inspected on 24/10/2020 and it was found that the unit has removed the dry sludge stored earlier.

As the unit has stored the dry sludge over impervious layer with tarpaulin cover and also it is non-hazardous silica solid waste, It is submitted that there is no environmental damage caused by the unit.

However, the Hon'ble NGT (SZ) vide order dated 09/09/ 2020 has stipulated to consider the imposing environmental compensation against the unit if any. As the unit has deposited sludge from trial production carried out during January 2018 and stored 48T of dry sludge (non-hazardous) without complying the consent condition stipulated.

5. It is respectfully submitted that the unit's non-compliance of CTO condition falls under the category 1.3 b) Not complying with the directions issued such as direction for closure due to non-installation of OCEMS, Non- adherence to the action plans submitted etc as per the report of the CPCB In- house committee on Methodology for Assessing Environmental compensation and Action Plan. Hence, Levying Environmental Compensation has considered to the unit is as follows:

Environmental Compensation (EC) is calculated as follows The Environmental Compensation based on the following formula: The Environmental Compensation $EC = Pl \times N \times R \times S \times LF$ Where, EC is Environmental Compensation in Rs. Pl = Pollution Index of Industrial Cluster- 60 for Red category since the unit is not in operation) N = Number of days of violation took place in the period between the day of violation observed and the day of compliance verified by TNPCB-79 days (from 06/08/2020 to 24/10/2020) R = A factor in Rupees (Rs.) for EC- 100 (Minimum is considered since the unit stored non-hazardous silica waste) S = Factor for scale of operation -1.5 (large scale unit) LF=Location factor-1(location factor-1, nearest village Getnamalli) $EC = 60 \times 79 \times 100 \times 1.5 \times 1 = \text{Rs. } 7,11,000/-$.

In view of the above, the unit was levied Environmental Compensation and issued following directions vide proceedings No.T2/TNPCB/F.0604GMP/A/2020 dated 03/12/2020 for compliance i. The unit shall remit the Environmental Compensation amount of Rs.7,11,000/- (Rs Seven Lakhs Eleven Thousand only) to the Board within a week.

ii. The unit shall comply with the all the conditions stipulated in the Environmental Clearance issued to the vide Letter No:

SEIAATN/F.No2896/2015/EC-34/2015 dated 21/12/2015 iii. The unit shall not commence its operation without obtaining the consent.

6. It is respectfully submitted that, the unit has furnished letter dated 16/12/2020 stating that there is no commercial production carried out and only trial production was carried out by the industry and unit is not in operation and hence no environmental compensation is applicable to the unit and unit also requested for consent renewal to commence the production. In this regard, the unit was inspected again on 28/12/2020 and found that the unit was not in operation and assured to comply with the EC conditions. In this regard personal hearing was conducted with the unit's officials on 29.01.2021 at TNPCB, Corporate office and during the discussion for non remittance of Environmental Compensation and the unit representative informed that they had filed an appeal in Hon'ble NGT (SZ) against, the Hon'ble NGT (SZ) order dated 09/09/2020 in Original Application No. 231 of 2016(SZ) and copy of the minutes of the meeting is enclosed.

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice."

23. In the same order, it was mentioned that against the imposition of environmental compensation, the 4th Respondent had preferred an appeal, but the details of the appeal were not submitted. Thereafter, the matter has been posted for hearing and adjourned several times, at the request of the counsel appearing for the parties. Lastly, on 18.01.2022, the matter was heard and taken up for judgment.

24. The learned counsel appearing for the applicant Mr. A. Yogeshwaran argued that in the guise of pulverisation of Barite Ore, they were doing beneficiation process, which requires prior Environmental Clearance (EC). Further, after establishing the so called pulverising/grinding unit, the 4th Respondent had established a beneficiation plant as well, for which, he applied for Environmental Clearance (EC) and after obtaining the same, without obtaining Consent to Establish, they have established the unit. This was brought to the notice of the Pollution Control Board by a complaint filed by the applicant and on inspection, they found that the 4th Respondent had erected the machineries and made the preliminary work for establishing the unit. Thereafter, a show cause notice was issued, but without taking further action, Consent to Establish and Consent to Operate were granted. So, according to the applicant, the ex-post facto consent granted is not valid in law and as such, the authorities ought to have taken stringent action against the 4th Respondent, especially when they were doing beneficiation process even prior to filing application for Environmental Clearance (EC) in the guise of pulverising/grinding of Barite Ore.

25. The learned counsel appearing for the MoEF&CC submitted that pulverising unit does not require any prior Environmental Clearance (EC). The 4th Respondent wanted to expand the same as beneficiation process, he applied for Environmental Clearance (EC) and obtained the same. They

also obtained necessary Consent to Establish and Consent to Operate and as such, there was no violation committed by the 4th Respondent. Further, if there is any violation of Consent conditions, then it is for the State regulators namely, the State Pollution Control Board to take action.

26. The learned counsel appearing for the State Pollution Control Board submitted that earlier the 4th Respondent intended to start pulverising/grinding unit of Barite which they were purchasing from the Andhra Pradesh Mineral Development Corporation Limited and they obtained the Consent to Establish and Consent to Operate for that purpose. Thereafter, when they wanted to expand the unit as a beneficiation project, they applied for Environmental Clearance (EC) and after obtaining ToR, public hearing was conducted and the minutes of the public hearing was forwarded to the SEIAA and thereafter, the State Expert Appraisal Committee had recommended the project and the SEIAA had issued the Environmental Clearance (EC). The 4th Respondent applied for Consent to Establish for the expanded unit and the same was also granted and subsequently, they obtained Consent to Operate and they were operating on that basis. Thereafter, they received a complaint from the applicant and they conducted the inspection and found that during the pendency of the application for Consent to Establish for the expanded project, they had proceeded with the work and installed the machineries. So, a show cause notice was issued and they stopped the work. Thereafter, Consent to Establish and Consent to Operate were also granted. Further, they applied for Consent to Operate after the period of original consent was expired and without stopping the process, they were continuing the same and also continuing the violation of condition. So, a show cause notice was issued to impose an environmental compensation of Rs.7,11,000/- and after obtaining the reply, the same was confirmed and directed them to pay environmental compensation and against the same, the 4th Respondent filed an appeal. Subsequently, the Consent to Operate was also granted and as such, there is no latch on their part and none of the officials colluded with the 4th Respondent in issuing the necessary Consent to the 4th Respondent.

27. The learned counsel appearing for the 4th Respondent argued that grinding/pulverizing unit does not fall under the EIA Notification and as such, they do not require any prior Environmental Clearance (EC). They started the unit after obtaining Consent to Establish and Consent to Operate. Thereafter, when they wanted to expand the project of beneficiation project, they applied for prior Environmental Clearance (EC) and after conducting proper enquiry as required under the EIA Notification, 2006 and following due procedure, the SEAC had recommended the project and the SEIAA has granted the Environmental Clearance (EC) in the year 2015. Without challenging the Environmental Clearance (EC), the applicant is not entitled to say that the Environmental Clearance (EC) granted is not proper. They also obtained Consent to Establish and Consent to Operate for the expanded project from the authorities. It is true that during the pendency of the application for Consent to Establish for the expanded project on the bonafide belief that they would immediately get the Consent to Operate, they had placed the orders and installed the machineries when it was obtained and that was established and trial run was done. In fact, they have not started the unit without obtaining Consent to Establish and Consent to Operate. Since the Board was satisfied about the same, they have issued the Consent to Establish and Consent to Operate for the expanded unit. But when the period of Consent to Operate was expired, they applied for renewal and due to the pendency of the proceedings before the Tribunal, they could not get the same. Thereafter, certain actions have been taken imposing environmental compensation and against the same an appeal has

been preferred and later, the appeal was also dismissed and according to the instruction, their client is aggrieved by the orders and they intend to file an appeal before the Appellate Authority i.e. before this Tribunal. They have installed the machineries for establishment of unit only for giving employment to the unemployed persons.

28. We have considered the pleadings, submissions made by the learned counsel appearing for both the sides and also the documents produced.

29. The points that arise for consideration are:-

(a) Whether the project initially started by the 4th Respondent requires any prior Environmental Clearance (EC)?

(b) Whether the 4th Respondent had started the beneficiation process in their unit without obtaining prior Environmental Clearance (EC) as required under the EIA Notification and other permissions as per environmental laws?

(c) If there is any violation committed, what is the nature of action to be taken against the 4th Respondent?

(d) What is the quantum of compensation to be imposed for the violation, if any, committed by the 4th Respondent?

(e) Whether further directions, if any, to be issued, if it is found that action taken by the authorities are insufficient?

(f) Relief and cost.

POINTS:-

30. The grievance of the applicant was that the 4th Respondent had started the beneficiation process of Barite Ore without obtaining necessary prior Environmental Clearance (EC) and Consent to Establish and Consent to Operate from the authorities and as it requires prior Environmental Clearance (EC) as per the EIA Notification, 2006. Further, they established the unit and thereafter, applied for Environmental Clearance (EC) and the same was granted in the year 2015 and Consent to Establish was granted, after the unit had established the machineries and other equipments. Though a complaint was received in this regard, without taking proper action, the Pollution Control Board had issued the Consents to the 4th Respondent. That prompted the applicant to file this application seeking dismantling of the unit and also initiate prosecution against the 4th Respondent for the violations committed. Respondents 11 to 13 were impleaded in their personal capacity being officials of the Tamil Nadu Pollution Control Board alleging that they colluded with the 4th Respondent for granting the ex post facto consent and also for not taking proper action against the 4th Respondent for establishing the unit without obtaining necessary consent.

31. The Pollution Control Board as well as the SEIAA - Tamil Nadu have contended that earlier the 4th Respondent started the grinding/pulverizing unit of Barite Ore which does not require any prior Environmental Clearance (EC) and they have obtained necessary Consent to Establish and Consent to Operate. Thereafter, when they intended for expansion of beneficiation process which requires prior Environmental Clearance (EC), they applied for Environmental Clearance (EC) and obtained the same. Thereafter, the Consent to Establish and Consent to Operate were also granted. When it was brought to their notice that there was violation committed, the Pollution Control Board had initiated action against them and imposed environmental compensation for the violation. According to them, there was no collusion and there is no necessity to initiate any action against the Respondents No.11 to 13 in their individual capacity and there was no inaction on part of the regulators and they have also undertaken that they will monitor the progress of the unit and whenever violations were brought to their notice, they will take appropriate action.

32. The 4th Respondent also has a contention that there is no violation and they are operating the unit strictly in accordance with law.

33. The question is as to whether the 4th Respondent was conducting the beneficiation process unit of Barite Ore without obtaining prior Environmental Clearance (EC) and necessary permissions under the environmental laws, but except the bare allegations made in the application, there is nothing on record to show that the activities of the 4th Respondent is in violation of environmental laws.

34. According to the 4th Respondent as well as the Pollution Control Board, the 4th Respondent had initially started the grinding/pulverizing unit which does not require any Environmental Clearance (EC). Thereafter, they filed an application for Consent to Establish and Consent to Operate and only thereafter, they had started the pulverising unit. The EIA Notification, 2006 also does not envisage for obtaining Environmental Clearance (EC) for pulverising unit of ore. It is also seen from the documents produced that the 4th Respondent had started the pulverising unit only after obtaining Consent to Establish in the year 2014 and the Consent to Operate in the year 2016 vide Board Proceedings dated 09.10.2014 and 19.02.2016 respectively.

35. It is also an admitted fact that the 4th Respondent intended to expand the unit for beneficiation process of Barite Ore into the blocks by "Column Flotation Technology" and they applied for Environmental Clearance (EC) and the same was granted to the 4th Respondent unit by the SEIAA vide their Proceedings No. Lr. No. SEIAA-TN/F.No.2896/2015/EC-34/2015 dated 21.12.2015. The applicant has not challenged the Environmental Clearance (EC) by filing separate appeal.

36. Thereafter, the 4th Respondent filed an application for Consent to Establish for expansion of the project. In meantime, the Pollution Control Board received the complaint from the applicant and on that basis, the 3rd Respondent conducted inspection of the 4th Respondent unit on 24.08.2016 and found that the 4th Respondent had installed the machinery for the beneficiation unit project without obtaining Consent to Establish. They issued a show cause notice and after obtaining reply, they have dropped further proceedings and issued Consent to Establish for the expansion project. Thereafter, the 4th Respondent applied for Consent to Operate and the same was also granted.

37. The report submitted by the Pollution Control Board will go to show that earlier the 4th Respondent was conducting only pulverising unit and not beneficiation process. So, there was no further acceptable evidence adduced on the side of the applicant to show that even at that time they were doing the beneficiation process without obtaining Environmental Clearance (EC). Further, the applicant had also no case that pulverisation unit requires any Environmental Clearance (EC) as per the EIA Notification, 2006.

38. It is also an admitted fact that when they intended to expand the unit one for beneficiation process as well for manufacturing of blocks, they applied for Environmental Clearance (EC) and obtained the same in the year 2015. They have obtained Consent to Establish for the expanded project and during the pendency of the proceedings for consideration of application for Consent to Establish, they have proceeded with the establishment of the unit by installing the machineries etc. and thereafter, on the basis of the complaint received from the applicant herein, inspection was conducted and show cause notice was issued, for which, the 4th Respondent had submitted their reply. After satisfying with the reply, the Pollution Control Board issued Consent to Establish (Expansion) and thereafter, Consent to Operate was also applied for and the same was granted.

39. When the matter came up for hearing on 22.01.2020, the learned counsel appearing for the Pollution Control Board submitted that the Consent to Operate granted to the 4th Respondent unit expired on 31.03.2018 and the unit had applied for renewal during July 2018 and it was returned for want of particulars. Thereafter, it was not resubmitted. When an inspection was conducted on 21.01.2020, it was found that the 4th Respondent unit was not functioning. It was not mentioned in the report as to whether without obtaining Consent to Operate, at any point of time, the 4th Respondent unit was functioning. Further, on that date, the learned counsel appearing for the 4th Respondent submitted that since the Consent application was pending, the Pollution Control Board cannot take any action for renewal of Consent to Operate, since it is subjudice before this Tribunal. But that contention was rejected by the Tribunal and directed the Pollution Control Board to consider the application for renewal (if any) and pass appropriate orders in accordance with law. So, this Tribunal, after considering the above submissions, directed the Pollution Control Board to take appropriate action, if there is any violation found in accordance with law and also to file a further report in this regard.

40. Thereafter, on 17.06.2020, this Tribunal had considered the report of the Pollution Control Board received on 17.06.2020 by e-mail and extracted in Para (4) of the order which reads as follows:-

"1. It is respectfully submitted that in pursuance to the above said order, the unit was inspected on 12.05.2020. During inspection, the following were observed:

The unit was not in operation. It has neither operated the ore grinding operation nor the beneficiation plant. It was informed that the unit was not in operation for want of raw material and due to summer management issues.

The unit has erected the machineries like slurry preparation column, flotation cell, high rate clarifier, filter press & rotary driers required for enrichment of barite powder in the existing high grade barite powder grinding plant by providing additional shed. The unit has provided 2 set of collection cum setting tanks with three compartments each for collection & setting of tailing water. The same is proposed to be recycled in the process by closed circuit loop system.

The unit has additionally provided impervious concrete platform to hold and dry the sludge collected from the above collection cum setting tanks.

The settled and dried sludge is proposed to be sent back to the ore minds located in Andhra Pradesh after getting necessary permission from the mining Authority. For which the unit has been requested to furnish an agreement with the mining authorities to refill the mines with the sludge generated from the process before the operation of the plant.

APC measures attached the process equipment were in place. The unit has furnished production statement from which is noted that the unit has stopped production since January 2018. During January 2018, it was reported that the unit has carried out trial production.

The unit has furnished report for AAQ and ANL survey conducted on 28.01.2020 by Private Laboratory from which it is reported that the observed values are within the standards prescribed by the Board.

CTO expansion has been issued to the unit with validity up to 31.03.2020.

It is further submitted that the unit has resubmitted its application of renewal of consent for the period up to 31.03.2021 through on line i.d.No. 31637258 dated 24.02.2020 which is further resubmitted on 08.05.2020 and the same was returned for want of the following particulars:

(iii) It was observed that the unit has not submitted the copy of the latest Audited Balance Sheet Showing the Gross Fixed Assets (GFA) without depreciation of the unit as stipulated for Red Large Industries, but the unit has uploaded the auditor certificate. Also the unit shall remit Rs. 2, 28,520/- towards balance amount of consent fee.

(iv) Also the unit was requested not to resume its production without obtaining valid renewal consent order of TNPC Board.

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) at Chennai may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice."

41. Thereafter, this Tribunal had passed the following order:-

"5. It may be mentioned here, that in the report it is only mentioned that the unit is not operating since January 2018, but they have not mentioned as to whether they are having the necessary consent to operate which even according to them expired on 31.03.2020. Further without conducting inspection at the time when the unit was in operation, it cannot be said that they are complying with the norms.

6. Though, it was mentioned in the report that the dry sludge was collected and deposited in a settling tank on the platform constructed it is not mentioned as to the extent of sludge available and whether the sludge is being removed as per the conditions of the consent to operate and whether it exceeds the limit provided as per the rules and if so, what is the action taken by the Pollution Control Board in this regard.

7. It is also mentioned in the report that though the unit has submitted for renewal of consent to operate up to 31.03.2021, the same has been returned for certain defects and it has not been represented and not considered by the Board so far. Without getting further report it is not possible to dispose of the case effectively.

8. Considering the circumstances, we feel it appropriate to grant two more months time to the Pollution Control Board to inspect the unit again and submit a proper report regarding the things mentioned above before this Tribunal or before 09.09.2020 through e-mail or e-filing at ngtszfilng@gmail.com.

9. The respondent who have not filed reply statement so far are directed to file the statement before the next hearing date and complete the pleadings so that the matter can be heard and disposed of on merits on the basis of the reports filed by the Pollution Control Board."

42. Again, the matter was taken up on 09.09.2020, this Tribunal had considered the letter dated 17.06.2020 sent by the DEE of Tamil Nadu Pollution Control Board to the Member Secretary, Tamil Nadu Pollution Control Board which was extracted in Para (3) of the order which reads as follows:-

"TAMIL NADU POLLUTION CONTROL BOARD From To
Dr.P.Kamaraj,M.Tech,Ph.D, The Member Secretary District Environmental Engineer
Tamil Nadu Pollution Tamil Nadu Pollution Control Board Control Board EPIP
Building (A.O Block) 76, Mount Salai SIPCOT Industrial Complex Guindy
Gummidipoondi, Chennai 600 032.

T i r u v a l l u r D i s t r i c t 6 0 1 2 0 1
Lr.No.F,GMP-0041/DEE/TNPCB/GMP/2020dated:08.09.2020 Sir, Sub:
TNPCB-O/o DEE-Gummidipoondi - M/s. Oren Hydrocarbons PVT Ltd (UNIT II),
S.F. No.383/{1F, 1E, 1G1. 1D1, 1D2 and 1C}, 377/1A2,378/[1 and 2], Getnamalli

Village, Gummidipoondi Taluk, Tiruvallur District-Status report submitted- Reg.

Ref: Application No.231 of 2016(SZ) before the Hon'ble National Green Tribunal (SZ) Chennai vide order dated 17.06.2020 ***** With reference to the Court Case vide Original Application No. 231 of 2016 (SZ) filed before Hon'ble NGT (SZ) by Voice of Nature represented by its secretary Thiru. M. Sathishkumar against the unit of M/s. Oren Hydrocarbons PVT LTD(Unit-II) which is located at S.F.No.383/{1E.1F and 1G1}, Getnamalle Village, Gummidipoondi Taluk, Tiruvallur District, the following report is submitted.

Base on the hearing on the said Court Case the Hon'ble NGT (SZ) vide order dated 17.06.2020, it has been stated that "the dry was collected and deposited in a settling tank on the platform constructed it is not mentioned a to the extent of sludge available and whether the sludge is being removed as per the conditions of the consent to operate and whether it exceeds the limit provided as per the rules and if so, what is the action taken report by the Pollution Control Board in this regard."

"Considering the circumstances, we feel it appropriate to grant two more months time to the Pollution, Control Board to inspect the unit and again and submit a proper report regarding the things mentioned above before this Tribunal or before 09.09.2020."

In this regard, it is submitted that that unit was issued CTO (Expansion) vide Board's proceedings No. T7/TNPCB/F.0604TLR/RL/ TLR/W&A/2017 dated: 01/06/2017 valid up to 31.03.2018 subject to certain conditions inter-alia, "Additional condition 4: The unit shall dispose the silica waste to be generated as solid waste from the process to the barite ore mining site as land filling".

In this regard, the unit's authorities were called for discussion on 03/08/2020 so as to discuss the effort made by the unit to comply with the above said condition. Based on which the unit has furnished letter dated 07/08/2020 that the unit had undertaken trial production of 320MTs of Enriched Barite Powder during the year 2017-18 and out of which 48MTs of silica waste had been generated and the same is proposed to be disposed to local cement Bricks manufacturing unit M/s. Amma Fly Ash Bricks & co located at Survey No. 212/19A, Sithiraja Kandigai village, Gummidipoondi Taluk and sample bags were reported to be handled for testing and trial purpose.

In the meantime, the unit was again inspected on 06/08/2020 and the following were noticed

1. The unit was not in operation.
2. The unit has cleaned the impervious concrete platform to dry the sludge (non-hazardous silica waste) collected from the above collection cum selling tanks.
3. The unit has stored 48MT of dried sludge with tarpaulin coverage (Photographs enclosed) In view of the above, Recommendations were submitted to the Board vide this office inspection report dated

29/08/2020 to consider the issue of renewal of consent under Water (P & CP) Act, 1974 as amended and Air (P & CP) Act, 1981 as amended to the unit for the period up to 31.03.2021 subject to the certain conditions as stated therein. The application is under process.

This is submitted for favour of kind information and further action please.

Sd/-

District Environmental Engineer, Tamil Nadu Pollution Control Board, Gummidipoondi."

43. Thereafter, this Tribunal had passed the following order:-

"4. It is seen from the copy of the letter that the unit was not in operation. They have cleaned the impervious concrete platform to dry the sludge (non hazardous silica waste) collected from the above collection cum settling tanks and they have stored 48MT of dried sludge with tarpaulin coverage.

5. It is also mentioned that the application filed by the 4th respondent unit for renewal of consent is under process.

6. It is not clear from the letter as to whether the quantum of silica waste kept namely, 48MT is within the permissible limit of stacking as per the earlier condition of consent to operate and what further action taken need to be by the Pollution Control Board, if there is any violation on the part of the unit, besides closure of the unit for non obtaining the renewal. Merely the unit is not functioning alone is not sufficient. The Pollution Control Board is expected to ascertain as to whether all the recommendations made by the Pollution Control Board have been fully complied with by the 4th respondent unit and there was no possibility of any pollution being caused on account of silica waste generated in the present condition. Unless these things are explained by the Board, it cannot be said that they have complied with the directions issued by this Tribunal.

7. So, under such circumstances, we direct the Pollution control Board to file a further status - cum action taken report for non compliance of the conditions imposed in the consent to operate by the 4th respondent which includes consideration of imposing any environmental compensation for the violation committed by the 4th respondent unit, on or before 28.10.2020 by e- filing to this Tribunal along with necessary hard copies as per rules."

44. On 28.10.2020, this Tribunal had considered the memo submitted by the 4 th Respondent reporting that Silica waste stacked there has been removed and this has been intimated to the Pollution Control Board vide their Letter dated 23.10.2020 and it is further mentioned in the memo that they have complied with the directions/conditions issued by the Pollution Control Board in this regard. On the basis of the memo submitted by the 4th Respondent, the Pollution Control Board was

directed to file a further report.

45. Thereafter, on 09.03.2021, this Tribunal had considered the further report submitted by the Pollution Control Board dated 23.01.2021 e-filed on 04.03.2021 and extracted in Para (4) of the order which reads as follows:-

"REPORT FILED ON BEHALF OF THE 2ND, 3RD AND 11TH TO 13TH RESPONDENTS - TAMILNADU POLLUTION CONTROL BOARD.

I, G. Gopalkrishnan, Son of Thiru.V. Gandhi, Hindu, aged about 58 years, having office at No. 76, Mount Salai, Guindy, Chennai-600 032, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-32 and I am filing this Reply Affidavit on behalf of the 2nd , 3rd and 11th to 13th respondents Board and as such I am well acquainted with the facts of the case from the records.

2. It is respectfully submitted that, the Hon'ble NGT (SZ) vide order dated 09.09.2020 and directed that:

"Para 6. It is not clear from the letter as to whether the quantum of silica waste kept namely, 48MT is within the permissible limit of stacking as per the earlier condition of consent to operate and what further action taken need to be by the Pollution Control Board, if there is any violation on the part of the unit, besides closure of the unit for non obtaining the renewal. Merely the unit is not functioning alone is not sufficient. The Pollution Control Board is expected to ascertain as to whether all the recommendations made by the Pollution Control Board have been fully complied with by the 4th respondent unit and there was no possibility of any pollution being caused on account of silica waste generated in the present condition. Unless these things are explained by the Board, it cannot be said that they have complied with the directions issued by this Tribunal.

Para 7. So, under such circumstances, we direct the Pollution Control Board to file a further status - cum action taken report for non-compliance of the conditions imposed in the consent to operate by the 4th respondent which includes consideration of imposing any environmental compensation."

3. It is further submitted that the Hon'ble NGT has passed order dated 28/10/2020, has stated that "...We have also mentioned in the order that there is nothing mentioned about the outcome of the renewal application submitted by the 4th respondent and whether the quantum of silica waste kept there was within the permissible limit of stacking as per the earlier condition of consent to operate and what was the further action taken by the Board, if it was a violation on the part of the unit, besides closure of the unit for non obtaining the renewal and also ascertain as to whether all the

recommendations made by the Pollution control have been fully complied with by the 4th respondent unit and there was no possibility of pollution being caused on the account of silica waste generated in the present condition and posted the case to today for filing further report specifying these aspects...."

4. It is respectfully submitted that the unit was issued CTO (Expansion) vide Board's proceedings No T7/TNPCB/F.0604TLR/RL/TLR/W&A/2017 dated: 01/06/2017 valid upto 31/03/2018 subject to certain conditions inter-alia, Additional Condition No 2. The unit shall comply with all the conditions stipulated in the Environmental Clearance issued to the unit vide Letter No.: SEIAA-TN/F.No.2896/2015/EC- 34/2015/dated 21/12/2015.

And as per EC condition: Specific Condition No xix) Tailings Residue or any type of solid waste rejects shall be taken back to Andhra Pradesh Mines (APM) for the landfill as committed with a Permission letter from APM and other requisite compliances. "Additional condition 4: The unit shall dispose of the silica waste to be generated as solid waste from the process to the barite ore mining site as land filling"

In this regard, the unit has furnished letter dated 23/10/2020 stating that the unit has cleared 48T of Silica Waste to the end-user M/s Jai Sai Traders, Manufacturers of cement and Ash Bricks located at Nagari, Andhra Pradesh. The unit has also furnished agreement dated 22/10/2020 executed with the said end-user and delivery challan. Based on the unit's letter dated 23/10/2020 regarding disposal of silica waste sludge, the unit was inspected on 24/10/2020 and it was found that the unit has removed the dry sludge stored earlier.

As the unit has stored the dry sludge over impervious layer with tarpaulin cover and also it is non-hazardous silica solid waste, It is submitted that there is no environmental damage caused by the unit.

However, the Hon'ble NGT (SZ) vide order dated 09/09/ 2020 has stipulated to consider the imposing environmental compensation against the unit if any. As the unit has deposited sludge from trial production carried out during January 2018 and stored 48T of dry sludge (non-hazardous) without complying the consent condition stipulated.

5. It is respectfully submitted that the unit's non-compliance of CTO condition falls under the category 1.3 b) Not complying with the directions issued such as direction for closure due to non-installation of OCEMS, Non- adherence to the action plans submitted etc as per the report of the CPCB In- house committee on Methodology for Assessing Environmental compensation and Action Plan. Hence, Levying Environmental Compensation has considered to the unit is as follows:

Environmental Compensation (EC) is calculated as follows The Environmental Compensation based on the following formula: The Environmental Compensation
 $EC = Pl \times N \times R \times S \times LF$ Where, EC is Environmental Compensation in Rs. Pl =

Pollution Index of Industrial Cluster- 60 for Red category since the unit is not in operation) N = Number of days of violation took place in the period between the day of violation observed and the day of compliance verified by TNPCB-79 days (from 06/08/2020 to 24/10/2020) R = A factor in Rupees (Rs.) for EC- 100 (Minimum is considered since the unit stored non-hazardous silica waste) S = Factor for scale of operation -1.5 (large scale unit) LF =Location factor-1(location factor-1, nearest village Getnamalli) $EC= 60 \times 79 \times 100 \times 1.5 \times 1 = \text{Rs. } 7,11,000/-$.

In view of the above, the unit was levied Environmental Compensation and issued following directions vide proceedings No.T2/TNPCB/F.0604GMP/A/2020 dated 03/12/2020 for compliance i. The unit shall remit the Environmental Compensation amount of Rs.7,11,000/- (Rs Seven Lakhs Eleven Thousand only) to the Board within a week.

ii. The unit shall comply with the all the conditions stipulated in the Environmental Clearance issued to the vide Letter No:

SEIAATN/F.No2896/2015/EC-34/2015 dated 21/12/2015 iii. The unit shall not commence its operation without obtaining the consent.

6. It is respectfully submitted that, the unit has furnished letter dated 16/12/2020 stating that there is no commercial production carried out and only trial production was carried out by the industry and unit is not in operation and hence no environmental compensation is applicable to the unit and unit also requested for consent renewal to commence the production. In this regard, the unit was inspected again on 28/12/2020 and found that the unit was not in operation and assured to comply with the EC conditions. In this regard personal hearing was conducted with the unit's officials on 29.01.2021 at TNPCB, Corporate office and during the discussion for non remittance of Environmental Compensation and the unit representative informed that they had filed an appeal in Hon'ble NGT (SZ) against, the Hon'ble NGT (SZ) order dated 09/09/2020 in Original Application No. 231 of 2016(SZ) and copy of the minutes of the meeting is enclosed.

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice."

46. At the time of hearing, the learned counsel appearing for the 4th Respondent submitted that an appeal has been filed against the order passed by the Pollution Control Board before the Appellate Authority as Appeal No.03 of 2021 and the same has been dismissed by the Appellate Authority and their client has proposed to file an appeal against the Appellate Authority's order. It is not known as to whether any appeal has been filed by the 4th Respondent against that order before the Tribunal, as there is no material produced before this Tribunal in this regard.

47. Since the Pollution Control Board had already taken action against the 4 th Respondent for the violation and imposed environmental compensation and against the same, appeal has been filed before the Appellate Authority which was also disposed of, we feel that no further directions are

needed to be given in this regard. Since all those things have been considered and thereafter, Consent to Establish, Consent to Operate and Environmental Clearance (EC) were granted for beneficiation project of the 4th Respondent unit and also this Tribunal observed that the prior activity of the 4th Respondent is only pulverising/grinding, for which, no prior Environmental Clearance (EC) is required and that was operated only after obtaining necessary permissions from the Pollution Control Board, this Tribunal feel that there is no necessity to restrain or issue any prosecution or direction and also for demolition of the construction made as sought for in the application. However, it is seen from the report submitted by the Pollution Control Board that for the earlier violation of installing the machineries before obtaining Consent to Establish or during pendency of the application for Consent to Establish, though a show cause notice was issued in this regard, we feel that some compensation has to be imposed on that aspect as well, as the report shows that is only in respect of violation of the consent conditions regarding the disposal of the Silica waste alone that environmental compensation was imposed.

48. So under such circumstances, applying the principle of "Doctrine of Proportionality", as the Consent to Establish itself was granted subsequently and Consent to Operate was also granted subsequently, we feel that instead of directing demolition, further direction of imposing compensation for that violation will be sufficient. So, over and above the compensation of Rs.7,11,000/- (Rupees Seven Lakhs and Eleven Thousand only) imposed by the Pollution Control Board, we feel that another amount of Rs.3,00,000/- (Rupees Three Lakhs only) can be imposed as compensation for the violation for installation of machineries without obtaining Consent to Establish for that purpose and that will meet the ends of justice. Further, directions can also be given to the Pollution Control Board to inspect the unit periodically and if there is any violation found, take appropriate action against the same in accordance with law will also serve the purpose and meet the ends of justice as far as both the parties are concerned. We have perused the reports of the Pollution Control Board and also the reason for imposing environmental compensation of Rs.7,11,000/- which was confirmed by the Appellate Authority in Appeal No.03 of 2021 filed by the 4th Respondent and we do not find any illegality committed by the Pollution Control Board in assessing the amount and imposing the same. So, we are confirming the same.

49. So, we feel that the application can be disposed of by giving the following directions:-

(a) Since the Consent to Establish, Consent to Operate and Environmental Clearance (EC) were already obtained for the beneficiation plant by the 4th Respondent and no appeal has been filed against the same, there is no necessity to restrain the 4th Respondent from running the unit, if they are having necessary renewal of Consent to Operate for the unit and there is no necessity to demolish and initiate prosecution as sought for by the applicant in the application, as this Tribunal has imposed compensation for the violation said to have been committed.

(b) Over and above the environmental compensation of Rs.7,11,000/-

(Rupees Seven Lakhs and Eleven Thousand only) imposed by the Pollution Control Board for subsequent violation of non- compliance of the conditions in respect of which proceedings have

already been initiated and appeal has been preferred by the 4th Respondent as Appeal No.03 of 2021 before the Appellate Authority Tamil Nadu Pollution Control Board, Chennai and the same has been dismissed on 27.02.2021, the 4th Respondent is directed to pay an additional amount of Rs.3,00,000/- (Rupees Three Lakhs only) for the violation committed by them of installation of machineries and making construction without obtaining Consent to Establish for the beneficiation plant and they are directed to deposit the amount with the Tamil Nadu Pollution Control Board within a period of 3 (Three) Months. The environmental compensation of Rs.7,11,000/- imposed by the Tamil Nadu Pollution Control Board and affirmed by the Appellate Authority is also confirmed and this amount also to be deposited by the 4th Respondent within a period of 3 (Three) Months.

(c) The 4th Respondent is entitled to operate the unit, if they have obtained necessary renewal of Consent to Operate from the Pollution Control Board and other necessary licenses as required for this purpose in accordance with law.

(d) The Tamil Nadu Pollution Control Board is also directed to conduct a periodical inspection of the 4th Respondent unit and during inspection, if there is any violation found, they are directed to take appropriate action against them, after complying with the procedure in accordance with law.

(e) If the 4th Respondent did not remit the compensation of Rs.10,11,000/- (Rupees Ten Lakh and Eleven Thousand only) i.e. [Rs.7,11,000/- imposed by the Pollution Control Board and Rs.3,00,000/- imposed by this Tribunal] within the time specified above, then the Tamil Nadu Pollution Control Board is directed to take steps to recover the amount from the 4th Respondent by initiating revenue recovery proceedings through the District Collector or invoking the procedure under Section 25 of the National Green Tribunal Act, 2010 in accordance with law.

(f) The Tamil Nadu Pollution Control Board is directed to file an action taken report for the recovery of compensation amount from the 4th Respondent within a period of 3 (Three) months, after the time of 3 (Three) Months granted for deposit is over.

50. The points are answered accordingly.

51. In the result, this Original Application is disposed of as follows:-

(i) Since the Consent to Establish, Consent to Operate and Environmental Clearance (EC) were already obtained for the beneficiation plant by the 4th Respondent and no appeal has been filed against the same, there is no necessity to restrain the 4th Respondent from running the unit, if they are having necessary renewal of Consent to Operate for the unit and there is no necessity to demolish and initiate prosecution as sought for by the applicant in the application, as this Tribunal has imposed compensation for the violation said to have been committed.

(ii) Over and above the environmental compensation of Rs.7,11,000/- (Rupees Seven Lakhs and Eleven Thousand only) imposed by the Pollution Control Board for subsequent violation of non-compliance of the conditions in respect of which

proceedings have already been initiated and appeal has been preferred by the 4th Respondent as Appeal No.03 of 2021 before the Appellate Authority Tamil Nadu Pollution Control Board, Chennai and the same has been dismissed on 27.02.2021, the 4th Respondent is directed to pay an additional amount of Rs.3,00,000/- (Rupees Three Lakhs only) for the violation committed by them of installation of machineries and making construction without obtaining Consent to Establish for the benefication plant and they are directed to deposit the amount with the Tamil Nadu Pollution Control Board within a period of 3 (Three) Months. The environmental compensation of Rs.7,11,000/- imposed by the Tamil Nadu Pollution Control Board and affirmed by the Appellate Authority is also confirmed and this amount also to be deposited by the 4th Respondent within a period of 3 (Three) Months.

(iii) The 4th Respondent is entitled to operate the unit, if they have obtained necessary renewal of Consent to Operate from the Pollution Control Board and other necessary licenses as required for this purpose in accordance with law.

(iv) The Tamil Nadu Pollution Control Board is also directed to conduct a periodical inspection of the 4th Respondent unit and during inspection, if there is any violation found, they are directed to take appropriate action against them, after complying with the procedure in accordance with law.

(v) If the 4th Respondent did not remit the compensation of Rs.10,11,000/- (Rupees Ten Lakh and Eleven Thousand only) i.e. [Rs.7,11,000/- imposed by the Pollution Control Board and Rs.3,00,000/- imposed by this Tribunal] within the time specified above, then the Tamil Nadu Pollution Control Board is directed to take steps to recover the amount from the 4th Respondent by initiating revenue recovery proceedings through the District Collector or invoking the procedure under Section 25 of the National Green Tribunal Act, 2010 in accordance with law.

(vi) The Tamil Nadu Pollution Control Board is directed to file an action taken report for the recovery of compensation amount from the 4th Respondent within a period of 3 (Three) months, after the time of 3 (Three) Months granted for deposit is over.

(vii) Considering the circumstances, parties are directed to bear their respective cost in the application.

(viii) The Registry is directed to communicate this order to the official respondents including the Tamil Nadu Pollution Control Board for their information and compliance of directions.

(ix) If the report is filed, the office is directed to place the same before the Bench for consideration and also for issuing further directions, if any, required in this regard.

52. With the above observations and directions, this Original Application is disposed of.

Sd/-

Justice K. Ramakrishnan, JM Sd/-

Dr. Satyagopal Korlapati, EM O.A. No.231/2016 (SZ) 31st January, 2022. Mn.