

Meenava Thanthai K.R.Selvaraj Kumar ... vs State Of Tamilnadu on 31 August, 2023

Author: Satyagopal Korlapati

Bench: Satyagopal Korlapati

Item No.1:-

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 08 of 2021 (SZ)

IN THE MATTER OF

Meenava Thanthai K.R. Selvaraj Kumar,
Meenavar Nala Sangam,
(Registered under Section 10 of the Tamil Nadu
Societies Act, in SL. No. 205 of 2015 dated 26.05.2015)
Represented by its President,
M.R. Thiyagarajan,
S/o Late C. Rajalingam,
Office at No.48, East Madha Church Street,
Royapuram, Chennai - 600 013.

...Applicant(s)

Versus

1. State of Tamil Nadu,
Through the Chief Secretary,
Government of Tamil Nadu, Secretariat,
Chennai- 600 009.
2. Tamil Nadu Pollution Control Board,
Through the Chairman,
76, Mount Salai,
Gunidy, Chennai - 600 032.
3. Tamil Nadu State Environment Impact Assessment Authority
Through the Chairman,
3rd Floor, Pangal Maligai,
No.1 Jeenis Road, Saiapet, Chennai - 600 015.

4. M/s. Velammal Educational Trust
(Hospital and Medical College)
Through the Chairman,
Velammal Village,
Madurai-Tuticorin Ring Road,
Anuppanadi,
Madurai-9.

...Respondent(s)

For Applicant(s): Mr. G. Stanly Hebzon Singh.

For Respondent(s): Dr. D. Shanmuganathan for R1.
Mr. S. Sai Sathya Jith for R2.
Mr. G. M. Syed Nurullah Sheriff for R3.
Mr. K. Sridhar, Mr. S.A. Gandhi and
Mr. R. Nepolian for R4.

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Judgment Reserved on: 09th August, 2023.

Judgment Pronounced on: 31st August, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

1. The 4th respondent is an educational trust running a hospital and a medical college. The allegation of the applicant is that the 4th respondent is dumping and discharging the biomedical/non-recyclable waste and effluent in the surrounding vacant areas and into the nearby water bodies and canals thus causing enormous pollution.

2. It is alleged that the 4th respondent is discharging the untreated medical effluent polluting the environment. The said medical college and hospital is alleged to be dumping the waste in the surrounding vacant areas and nearby water bodies in an improper and unscientific manner. The above act of the 4th respondent is against the Biomedical Waste Management Rules, 2016. The said Biomedical Waste Management Rules, 2016 implies certain specific duties and responsibilities on the occupier/generator of the biomedical waste which the 4th respondent is not following. The applicant has listed out the duties of the waste generator and alleged that the waste is being

disposed in irregular manner without complying with the rules laid down. Besides the violation of the Biomedical Waste Management Rules, 2016, the 4th respondent also had constructed the building without obtaining prior clearance from the State Environment Impact Assessment Authority.

3. The medical College and Hospital is constructed in an extent of 1,43,163.012 Sq.m. spread over in several survey numbers in Anuppanadi Village, Madurai South Taluk, Madurai District and was granted Environmental Clearance on 17.04.2013. The Environmental Clearance was valid for a period of 05 years and it expired in the year 2018 after which it was not renewed by the project proponent. Without renewal of the same or obtaining prior Environmental Clearance for expansion, the 4th respondent had constructed a few more buildings which would come under Item 8(a) classified as „B Category. The 4th respondent is alleged to be constructing a few more of the buildings without obtaining prior Environmental Clearance. Even the earlier Environmental Clearance which was granted on 17.04.2013 subject to certain conditions was also violated by the 4th respondent as mentioned below:

- (i) There was no green belt developed by the 4th respondent and said green belt area is converted into construction area.
- (ii) There is illegal extraction of ground water without obtaining permission from the concerned authorities.
- (iii) No adequate STPs are provided as required in the Environmental Clearance.
- (iv) No proper treatment of solid waste and biodegradable waste.
- (v) There is no treatment for non-biodegradable/recyclable waste.
- (vi) The biomedical and non-recyclable wastes are dumped into the nearby water bodies.

4. Though, the above violations were brought to the knowledge of the authorities concerned, no action has been taken. Hence, the above Original Application is filed seeking:

- (I) A direction to the respondent nos. 1 to 3 to initiate action against the 4th respondent for non-compliance of the rules laid down under the Biomedical Waste Management Rules, 2016. (II) To initiate action against the 4th respondent for the illegal dumping and discharge of biomedical/non-recyclable waste in the surrounding vacant areas.
- (III) Direct the 4th respondent to stop all construction activities for which they have not obtained the Environmental Clearance. (IV) To direct the 3rd respondent to take action against the 4th respondent for violation of the conditions mentioned in the Environmental Clearance.

(V) To take appropriate action under the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Biomedical Waste Management Rules, 2016.

5. The 2nd respondent, Tamil Nadu Pollution Control Board filed a report dated 07.04.2021 in which it is stated an inspection was conducted on 10.03.2021 and it was observed as follows:

(i) The 4th respondent, Health Care Facility (HCF) was in operation.

(ii) It was adopting colour coding system in bags/containers/bins for the collection of biomedical waste as per the Biomedical Waste (Management & Handling) Rules, 2016 in all wards.

(iii) A separate biomedical waste collection room with lock and key facility system is established.

(iv) Already the 4th respondent has entered into an agreement with the common facility, namely, M/s Ramky Energy and Environment Limited, Virudhunagar for the safe disposal of biomedical waste generated from the HCF which is valid up to 14.02.2022.

(v) There is also a bar coding system for the bags containing biomedical waste sent to the common facility.

(vi) There is a logbook for the disposal of the biomedical waste to the common facility on daily basis. From the records, it was observed that the 4th respondent is disposing the biomedical waste of 520 kg/day on an average.

(vii) The solid waste including plastic, carton boxes, paper etc., are separately collected and sent for recycling through vendors.

(viii) Food waste and other organic wastes are collected in dumping bin and disposed through Madurai Corporation.

(ix) Regarding the STP, there is a 400 KLD capacity STP is installed to treat the sewage. Similarly, a STP of 100 KLD capacity is installed for treating the sewage generated from the staff quarters.

(x) There is also an Electro Magnetic Flow Meter at the inlet and outlet of the STP-I and II to assess the quantity of sewage treated and disposed.

(xi) Separate logbooks are maintained for STP-I and II from which it was evident that 300 KLD and 60 KLD of sewage is treated in the STP-I and II respectively.

(xii) The treated sewage is also utilised for gardening purpose after disinfection within the HCF campus.

(xiii) There is also a laundry building separately for which consent was applied for under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

6. There is another report of the Pollution Control Board filed on 24.07.2021. This report was filed after inspection conducted on 17.06.2021. As per this report it was found that the 4 th respondent had executed an agreement with the authorised recycler for the disposal of used oil generated from the D.G. Sets. The 4 th respondent had obtained permission from the Madurai Corporation for the supply of water and it is also developing a green belt inside the premises.

7. However, it was observed that the 4th respondent had not provided On-site pre-treatment of microbiology, biotechnology and other clinical laboratory waste as per Schedule 1 of Biomedical Waste Management Rules, 2016. The 4th respondent also had not made facility for annual report available in their website as per Biomedical Waste Management Rules, 2016. It had not furnished annual report in Form-IV to the Pollution Control Board and there is no authorisation under the Biomedical Waste Management Rules, 2016. There is also no separate collection system with effluent treatment plant to treat the liquid waste generated from laboratory, floor washing, cleaning, housekeeping and disinfecting activities as per the Biomedical Waste Management Rules, 2016.

8. Therefore, the Pollution Control Board had assessed the Environmental Compensation payable as Rs.86,62,500/- (Eighty Six Lakhs Sixty Two Thousand and Five Hundred only) for the period between 13.03.2020 and 17.06.2021 based on the CPCB methodology for assessing the Environmental Compensation for the HCFs for the non-compliance of the Biomedical Waste Management Rules, 2016. For the assessed amount, a show cause notice was issued under Section 5 of the Environment (Protection) Act, 1986 on 20.07.2021.

9. The next report of the Pollution Control Board is dated 22.10.2021. In the above report it was mentioned that the Environmental Compensation of Rs.86,62,500/- (Eighty Six Lakhs Sixty Two Thousand and Five Hundred only) which was levied by the Pollution Control Board was remitted by the 4th respondent on 04.10.2021. So far as the consent orders are concerned, the 4th respondent had not obtained the same from the Board as it had not submitted the revised Environmental Clearance. Hence, the application of the 4th respondent unit to consider the issue of authorisation under Biomedical Waste Management Rules, 2016 was returned by the Pollution Control Board and it has not been resubmitted for consent along with Environmental Clearance for amendment.

10. The last and final report of the Pollution Control Board was filed on 11.04.2023. This report was filed after inspection on 13.02.2023 and the Pollution Control Board had observed that during inspection STPs were in operation. The treated sewage is partly utilised for gardening purpose within the 4th respondent campus. The biomedical waste is disposed through common biomedical waste treatment and disposal facility, namely, M/s. Resustainability Health Care Solution Limited. Pursuant to the order of this Tribunal, the Board had issued yet another show cause notice for the

period from 17.06.2021 to 14.03.2023 claiming Environmental Compensation of Rs.35,77,500/- (Thirty Five Lakh Seventy Seven Thousand and Five Hundred only) by proceedings dated 10.04.2023. It is also stated that the Pollution Control Board is monitoring the operation of sewage treatment plants and disposal of biomedical waste from the 4th respondent.

11. The 3rd respondent, Tamil Nadu SEIAA, in its report dated 20.12.2021 has stated that the first Environmental Clearance was granted in favour of the 4th respondent under Item 8(a) of the Schedule under „B2 Category which does not require public consultation on 17.04.2013 for a period of 05 years. The said report has referred to S.O. No. 1030 (E) dated 08.03.2018 wherein it is stated that for the Category A of the Schedule of the EIA Notification, 2006, Environmental Clearance will be granted at the central level and for the Category B projects, the appraisal and approval shall vest with the State or Union Territory Level Expert Appraisal Committees. The OM dated 15.03.2018 issued by the MoEF&CC provided for the guidelines regarding implementation of S.O. No. 1030 (E).

12. So far as the 4th respondent is concerned, it submitted an application seeking TOR under the MoEF&CC on 14.03.2017 and 08.03.2018. The proposal seeking TOR was placed in the SEAC meeting on 01.10.2020 wherein it was decided to recommend the Terms of Reference in three parts for the project for assessment of ecological damage, remediation plan and natural and community resource augmentation plan to be prepared as an independent chapter in the EIA reported by an accredited consultant and also collect the analysis data for the assessment of ecological damage and remediation plan.

13. The proposal was placed in the meeting of the SEIAA held on 29.10.2020 and it was decided to accept the recommendation of the SEAC to consider the application dated 13.06.2017 and grant standard Terms of Reference vide letter dated 23.11.2020. A sub- committee constituted by the Chairman of the SEAC had inspected the proposal site seeking the Environmental Clearance for the existing construction in survey numbers 61/1, 61/2 etc., and submitted an inspection report. The said inspection report of the sub-committee was placed in the 198th meeting of the SEAC on 05.02.2021. After placing the proposal on several meetings and asking the project proponent to furnish the documents including calculation of ecological damage caused, remediation plan and natural and community resource augmentation plan as per the approved procedure and submit the same.

14. The SEAC in its meeting held on 09.07.2021 decided to recommend the proposal to SEIAA for grant of Environmental Clearance subject to the conditions mentioned therein and also subject to the outcome of the present Original Application No. 08 of 2021. On 09.08.2021, the SEIAA requested the 4th respondent to furnish the particulars as recommended by the SEAC in its 218th meeting dated 09.07.2021.

15. In the meanwhile a letter was addressed to the Environment, Climate Change and Forest Department, Government of Tamil Nadu on 11.10.2021 to take action against the 4th respondent under the provisions of Section 19 of the Environment (Protection) Act, 1986.

16. In the independent report filed by the SEIAA dated 13.02.2023, it was stated that after the 1st Environmental Clearance issued in the year 2013, the 4th respondent had once again applied for Environmental Clearance and submitted an application for seeking ToR for appraisal of the EIA report for the expansion activity which is an increase in the built up area. The said application was made by the 4th respondent through the violation window. There was also a letter addressed to the Government of Tamil Nadu to take action against the project proponent under the provisions of the Section 19 of the Environment (Protection) Act, 1986 for violation of the EIA Notification, 2006.

17. The Pollution Control Board also filed a violation case against the 4th respondent in CC. No.2503 of 2022 before the Hon'ble Judicial Magistrate No.4 by its order dated 30.06.2022 disposed at the same imposing a fine of Rs.10,000/- on the Chairman and another Rs. 10,000/- on the hospital.

18. The SEIAA also had filed a report of compliance on 24.07.2023. In the said report it has referred to the S.O. No. 3252 (E) dated 22.12.2014 in which Building/ Construction Projects/ Area Development Projects and Townships and sub-items 8(a) and 8(b) and the entries related thereto stated that term built up area for the purpose of notification. However, in the note, it is stated that the project or activity shall not include industrial shed, school, college, hostel for education institution but such building shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and use recycled materials such as fly ash bricks.

19. There was another S.O. No. 5736 (E) dated 15.11.2018. As per this notification the local bodies such as municipalities, developmental authorities and district panchayats shall stipulate environmental conditions while granting building permission, for the building or construction projects with built up area of 20,000 sqm and in the Schedule for Item 8 and the entries related thereto, specified thereunder, following item and entries shall be substituted "The projects or activities shall not include industrial sheds, educational institutions, hospital and hostels for educational institutions". However, the above S.O. No. 5736 (E) dated 15.11.2018 stayed by the Hon'ble High Court of Delhi in W.P. 12570 of 2018 and said to be pending. Nevertheless, it was pointed out that in case of medical universities and institutes the component of hospital will continue to require prior Environmental Clearance.

20. The 4th respondent in the reply statement has listed out all the compliance regarding the complaints made by the applicant. It is stated that the Environmental Clearance was issued on 17.04.2013. SEIAA had discussed the proposal in detail and issued the Environmental Clearance. The project specification provided in the Environmental Clearance was of the plot area of 1,51,605.36 Sq.m. and the built up area of 1,43,163.015 Sq.m. and parking area of 39,194.13 Sq.m. were completed within the stipulated project time as provided in the Environmental Clearance. The other constructions in the project are the college, hostel for students which are also connected within respondent's educational institution are exempted from the built up area for the purpose of EIA Notification, 2006 as amended.

21. The 4th respondent also had submitted the application dated 13.06.2017 prior to the expiry of the environmental Clearance dated 14.04.2013 with regard to the expansion of the project. It is

stated further that apart from the exempted construction in the project site, the other constructions are not connected with the 4th respondent or their project. Regarding the other non-compliances of waste management under the Biomedical Waste Management Rules, 2016, it is stated that the 4th respondent has been complying with all the parameters as provided under the rules. However, there is a delay in getting the compliance certificate and they are taking appropriate steps to ensure the same.

22. In this regard it would be appropriate to refer to the report of the District Collector, who had taken up joint inspection on 20.07.2023. The Revenue Divisional Officer, Melur Division and the District Environmental Engineer, Madurai along with survey and revenue officials had inspected the premises and submitted a report stating that the state on ground remained unchanged since their last inspection dated 14.09.2022 and that there are no encroachments in the water body abutting the premises and the medical wastages are not let into the water body as alleged in the Original Application.

23. A show-cause notice was issued by the Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 for running the unit without obtaining consent of the Board as well as for other violations. For the said notice dated 19.03.2020, the 4th respondent had given an explanation dated 20.05.2020. A further inspection was made on 05.06.2020 and 04.07.2020 which revealed violations against which the Pollution Control Board had awarded an Environmental Compensation to the tune of Rs.86,62,500/- (Eighty Six Lakhs Sixty Two Thousand and Five Hundred).

24. The SEIAA, Tamil Nadu also had found that the 4th respondent had made a progress in the construction without prior Environmental Clearance as mandated in the EIA Notification, 2006 and initiated a criminal case before the Ld. Judicial Magistrate, Madurai in C.C. No. 2503 of 2022 who enforced the penalty of Rs.20,000/- (Twenty Thousand) on 12.07.2022.

25. Once again an inspection was caused by the Pollution Control Board on 13.02.2023 to find that the STPs were in operation and treated sewage is partly utilised for health, ventilation and air conditioning system and the remaining is utilised for gardening purpose and that it was ascertained that the biomedical waste is disposed through common biomedical waste treatment and disposal facility through M/s Resustainability Health Care Solutions Limited, Virudhunagar. The Board also had issued another show-cause notice on 19.01.2023 under Section 5 of the Environmental (Protection) Act, 1986 for violation of the provisions of the Biomedical Waste Management Rules, 2016 for a further period from 17.06.2021 to 14.06.2023 levying a compensation of Rs.35,77,500/- (Thirty Five Lakh Seventy Seven Thousand and Five Hundred) by proceedings dated 10.04.2023. The said amount was also paid by the 4th respondent on 21.04.2023. It is now stated by the District Collector that the biomedical waste from the HCF are being closely monitored by the Tamil Nadu Pollution Control Board and the revenue machinery is also keeping a close watch to ensure that there is no encroachment in the water body abutting the 4th respondent. It is specifically stated by the District Collector that the allegations of the applicant that debris and other waste generated in the medical college was dumped into the water body is false and exaggerated.

26. In the light of the above discussions, it can be seen that the respondent Nos.1 to 3 have taken appropriate action against the 4th respondent for non-compliance of the Biomedical Waste Management Rules, 2016.

27. The Pollution Control Board had already initiated action and levied penalty of Rs. 86,62,500/- (Eighty Six Lakhs Sixty Two Thousand and Five Hundred) for the period ending with 17.06.2021. For the period between 17.06.2021 and 14.06.2023 also, the Board has levied Rs. 35,77,500/- (Thirty Five Lakh Seventy Seven Thousand and Five Hundred) and both the above referred amounts are paid by the 4th respondent.

28. In addition to that SEIAA has initiated a criminal case before the Ld. Judicial Magistrate, Madurai in CC No. 2503 of 2022 who had imposed a penalty of Rs.20,000/- (Twenty Thousand) on 12.07.2022.

29. It is also found that the 4th respondent has engaged M/s. Resustainability Health Care Solution Limited, Virudhunagar for disposing the biomedical waste. The District Collector also has stated in here report that Pollution Control Board as well as revenue machinery is keeping a close watch and would continue to monitor the 4th respondent to ensure that there is no encroachment either in the water bodies abutting the 4th respondent or in the nearby surrounding places.

30. However, it is noted that the Tamil Nadu Pollution Control Board has levied environmental compensation for non-compliance of Bio Medical Waste Management Rules, 2016 as follows:

a. For the period 13.03.2020 to 17.06.2021 (13 Months)

- Rs. 86,62,500/-.

b. For the period 17.06.2021 to 14.06.2023 (24 Months)

- Rs. 35,77,500/-.

It is evident that for a shorter period of 13 months environmental compensation levied is Rs. 86.62 lakhs whereas, for a period of 24 months Environmental Clearance levied is only Rs. 35.77 lakhs.

31. It is also noted that the report of the Tamil Nadu Pollution Control Board (TNPCB) dated 11.04.2023 had highlighted other violations such as „Consent to Operate not obtained, non-operation of STP and ETP and not obtaining authorization under Hazardous and Other Waste Management Rules, etc. The Tamil Nadu Pollution Control Board needs to impose environmental compensation for the above violations also in case this was not taken into account in the earlier orders.

32. Admittedly, the 4th respondent had obtained Environmental Clearance for the construction of the hospital which was valid till 2017. But, Environmental Clearance was not obtained for the

expansion.

33. In view of the above findings, complaints made by the applicant are being addressed and the learned counsel for the applicant also admitted that the 4th respondent has complied with all the statutory requirements and has also filed an application for Environmental Clearance for expansion of the buildings under violation category.

34. Accordingly, in view of the above findings, the Original Application is disposed of with the following directions:

(i) The Tamil Nadu Pollution Control Board to examine the correctness of the environmental compensation levied for the period 17.06.2021 to 14.06.2023 and also levy an environmental compensation for other violations noted by them in case they are not factored in the orders already passed.

(ii) The Tamil Nadu State Environment Impact Assessment Authority (TN-SEIAA) to consider the pending application for grant of Environmental Clearance for the expansion as per the rules in force taking into account the delay in applying for the Environmental Clearance under violation category and the commencement of construction without Environmental Clearance and the environmental compensation applicable for the same.

Sd/-

.....J.M. (Smt. Justice Pushpa Sathyanarayana) Sd/-

.....E.M. (Dr. Satyagopal Korlapati) Internet - Yes/No All India NGT Reporter -
Yes/No O.A. No.08/2021(SZ) 31st August, 2023(AM)