

Before the Hon'ble National Green Tribunal, Chennai
(Under Sec. 18 (1) r/w Sec. 14 - 17 of the NGT Act, 2010)

O.A. No. 58 of 2017

Between:

T. T. Rangasamy,
President,
Bhavaani Nadhineer Matrum Nilaththadi Neer
Paadhuhaappuk Kuzhu,
(Bhavani River Water and Ground Water Protection
Committee),
Uma Sankar Nilaiyam, L.S. Puram,
Mettupalayam - 641301

... Applicant

and

1. State Government of Tamil Nadu through
its Chief Secretary,
Government of Tamilnadu,
Fort St. George, Chennai
2. The Secretary,
Ministry of Environment and Forests,
Government of Tamilnadu,
Fort St. George, Chennai.
3. Commissioner,
Department of Municipal Administration and Water
Supply,
Government of Tamilnadu,
6th Floor, Ezhilagam (Annexe Building),
Chepauk, Chennai 600005.
4. Engineer-in-Chief (Water Resources Organisation)
and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai 600 005
5. The Chairman-cum-Managing Director,
Tamilnadu Generation and Distribution Corporation
Limited, (Tangedco),
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai 600 002.
6. Chairman,
Tamilnadu Pollution Control Board,
76, Mount Salai,
Guindy, Chennai – 600 032
7. The District Collector,
Coimbatore,
641018
8. Superintendent of Police,
Coimbatore District,
Ram Nagar, Coimbatore, 641018.

9. Commissioner
Municipality,
Mettupalayam.

... Respondents

Written submission of the Applicant

1. The Applicant respectfully submits the following facts with reference to the reply given by the Joint Committee as has been recorded in the Order passed by the Hon'ble Tribunal on 22.03.2021. The direction given by the Hon'ble Tribunal on 02.01.2020 was "to test the water quality of Bhavani river **throughout the stretch**", as per the Terms of Reference, "and find out its quality and if it is not to the extent of potable drinking water standard, suggest the remedial measures to achieve the same". But the Joint Committee has not done that till date. The seven points from which it collected the samples, as mentioned in Pages 3 & 4 of its report, cannot represent the 135 Km of the river from Nellithurai to Kooduthurai. Instead the Committee comes forward with the feeble explanation that the Sirumugai-Kooduthurai stretch is in Erode district, as if that area is beyond the jurisdiction of the Hon'ble Tribunal and the Joint Committee appointed by it. The Joint Committee was only a Fact Finding Mission of the Hon'ble Tribunal. It has the authority to visit all the places throughout the stretch of the River Bhavani, its being an arm of the Hon'ble Tribunal. But the Joint Committee chose to confine its investigation within the geographic jurisdiction of the District Collector, Coimbatore only and collected water samples from "the entire stretch of River Bhavani that flows in Coimbatore District" as mentioned against Item 7 of its report (Page 5 of the Order dated 22.03.2021 of the Hon'ble Tribunal). This itself makes the entire report of the Joint Committee not helpful to examine the real extent of pollution in the water of the river Bhavani. It is prayed that the Joint Committee may kindly be directed to collect the samples 'throughout the

stretch' to examine and arrive at its findings for submission before the Hon'ble Tribunal, or to appoint a different Joint Committee for Erode district, as the "river Bhavani downstream from Sirumugai to Kooduthurai flows in Erode district". The first Gandhian experiment, the Champaran Satyagraha of 1917, started as an extensive fact-finding exercise by Gandhi on his own through his own fact-finding-committee. That committee's findings led the then Lieutenant Governor of Bihar, Sir Edward Gait, to set up a formal enquiry committee with Gandhi as one of its members. It is, therefore, submitted that it would be appropriate if some non-official members of the public are made members of the said committee to make the report all-inclusive. In the absence of non-official members in the present Joint Committee, its report dated 18.03.2021 amounts to nothing more than a combined Counter-Affidavit of the Official Respondents.

2. It is submitted that the Joint Committee had not drawn water sample from the upper reaches of the river above the Intake-well from which point, drinking water is supplied to Mettupalayam. There are three major pollution sources / points above this intake-well, (i) the confluence point of Periapallam where polluted water caused by the ITC mixes with the Bhavani water (ii) Sarada Terry Products and (iii) the confluence point of Kallaru river. These points of pollution are, therefore, very material to the Facts-in-Issue in this case. Moreover, all these points fall within the jurisdiction of the District Collector, Coimbatore District.

3. It is submitted that the replies given by the Joint Committee against Items 19, 20 and 21 establish very clearly that the Committee, which includes even Municipal Commissioner as the Respondent-9, has not understood the problem at all. The prayer (a) of the Applicant herein before the Hon'ble Tribunal was for supply of drinking water to the people of Mettupalayam and other towns /villages from Vilamarathur near Nellithurai through pipeline, by shifting the present intake point to higher elevation. The construction of the STP and UGSS by the Respondent-9 is irrelevant to the issue, and would not reduce the level of pollution in the water supplied to Mettupalayam, as the municipal effluent of Mettupalayam is let out only at the lower

point, below the level at which the intake well meant for Mettupalayam is situated. The extent of pollution at that point, especially in summer had been highlighted in the documents submitted in the Typeset. The reasons advanced by the. TWAD for shifting the supply point for Kaundanpalayam-Vadavalli project in the year 2012 apply *mutatis mutandis* to the plea for shifting the supply point for Mettupalayam to Vilamarathur near Nellithurai. The Joint Committee has committed a grave error in having recorded such irrelevant reply against Items 19, 20 and 21 of its reply. Its report is, simply, not useful at all to assist the Hon'ble Tribunal in arriving at a just and correct decision.

4. It is submitted that the presence of coliform bacteria is a serious threat to health but the report of the Joint Committee does not highlight it with reference to the Kallaru river water which brings in the municipal effluents from Coonoor Municipality. The presence of copper is suggested as a geographical factor without any efforts to find out the real source of its presence as a pollutant.

5. It is submitted that the Joint Committee did not make any surprise visit. As the factories concerned were aware of the proposed visit, they took care to see that things were within law on that particular day only. The TNPCB does have the data of results of water samples taken for a complete year. But those details were not sought for by the Joint Committee, examined on file, recorded in the report and findings arrived at. The Committee had, thus, not taken efforts to ascertain facts even from the available records of various departments of the Official Respondents.

6. The Joint Committee has not inspected the extent of real irrigation of effluent in the fields of the Industries which let their effluents in the lands, streams and Odai indiscriminately and make them flow into the river; it has not mentioned the details of crops grown there, the irrigation requirement for those crops, etc., No Fact-Finding-Mission can ever arrive at the truth without collecting these Relevant Facts.

7. The field reality is that there is no cultivation worth its name in the vast land area of the ITC. The ITC is required to intimate the TNPCB about the planted crops

as per guidelines. But those details had not been produced by TNPCB; nor were they called for and verified by the Joint Committee.

8. It is submitted that the Joint Committee does have the jurisdiction to examine the viability or otherwise of the two barrages, one of them having been constructed even without the NOC from the TNPCB, the Respondent-6 herein. The Joint Committee's reply against Item 22 of its report is absolutely improper.

9. The Committee has not drawn water samples from the 'Odai' at the upper reaches of the river Bhavani, the area adjoining the check-dams on both sides of the premises of the ITC. It did not draw water samples from the lower reaches of the River Bhavani upto Kooduthurai. The TNPCB should submit the analytical results of water samples of the Odai during pre-monsoon, post-monsoon, and at periodical intervals to know the real effect of the discharge of effluent by the ITC on water bodies. There is no information in the report of the Joint Committee that it verified those details.

10. Pure water can always be poured into the sample-drums and the gravity of pollution tampered with, when samples are taken from those drums for analysis. As per the CPCB guidelines, the effluent water sample is required to be taken for analysis from the discharge outlet in the field and not at the ETO outlet. But the Joint Committee has taken samples for analysis only at the ETO outlet.

11. A simple arithmetical calculation would show that the ITC cannot and does not use the entire effluent for agro-purposes and, consequently, lets the effluents pollute the lands and, consequently, the river in the neighbourhood. The undulating nature of the field in which the ITC lets its effluents flow make the effluents flow downwards and spoil the neighbourhood and the river. This simple fact has been overlooked by the Joint Committee. The entire report of the present Joint Committee is thus incomplete and defective.

Para-wise submissions:

12. In regard to the findings of the Joint Committee against Item 7, it is submitted that the findings are wrong. It is a fact that the fecal matter in the sewage cannot be treated by ETP. The Joint Committee gives this explanation now without having, in the first place, analysed the water let out after the so-called 'treating' of the 132 KLD of sewage.

13. In regard to the findings of the Joint Committee against Item 8, it is submitted that the findings are wrong. The Joint Committee gives this explanation, as an after-thought, and without having, in the first place, analysed the water let out after the so-called 'treating' of the 50 KLD of sewage.

14. In regard to the findings of the Joint Committee against Item 9, it is submitted that the Joint Committee has not paid surprise visit. Any company can stage-manage the position for a day or two. The fact that there is no permanent mechanism in the factory premises to discharge the treated effluent at the rate of 35 KLD per hectare, as mandated. It is impossible to deliver 35 KLD/ha without installation of micro irrigation system. The ITC is employing flood irrigation method and channel irrigation. The TNAU research had also used 7120m³/ha for 10 irrigations implying that 712 KLD of the supposedly treated effluent was used for irrigation per hectare every time. The usage is more than 20 times of the consented requirement of 35 KLD. The TNAU research is, thus, fundamentally wrong and does not have research value at all. The Joint Committee has confirmed that the untreated or partially-treated effluent was found used on the land, after noticing white sludges in the water channels. The situation continues thus till now in spite of their having been imposed penalty in another case.

15. In regard to the findings of the Joint Committee against Item 10, it is submitted that the Joint Committee has not chosen to place the relevant facts before the Hon'ble Tribunal with reference to the very important defect brought out in the Written submission of the Applicant herein. The TNPCB has not entrusted any of its work or

delegated any of its power to the TNAU. The role of the TNAU in this matter is different from that of the TNPCB. The report of the TNAU has not, first of all, been called for by the Joint Committee and the relevant facts examined, on record, with reference to the extent of pollution or the methods of controlling pollution. Moreover, The TNAU does not make its report public even when sought under the RTI Act. The fact is that the TNAU is taking fresh-water samples of the nearby farmers and comparing them with the effluent water standards prescribed by the TNPCB, equating the fresh water with the effluent water standard. It is submitted that allowing the fresh water quality to deteriorate to the treated effluent water standard would destroy the livelihood of farmers when the progressively-deteriorating farm water reaches the standards of the discharged-effluent water, e.g., if the farm water reaches and exceeds 2100 mg/lit of TDS, the particular water becomes unfit even for agricultural use. Farmers will, then, have to abandon farming overnight. The TNAU, which does only a collaborative research with the ITC, has not been made a party to the case. It did not do the research independently. And the Joint Committee of four officials had just abdicated its responsibility to call for the reports and records of the TNAU and examine the contents before submitting its report dated 18.03.2020. As a result, the Joint Committee has prevented the Hon'ble Tribunal from ascertaining the relevant facts pertaining to the problem of pollution plaguing the river Bhavani. The water samples were drawn only from bench mark sites and not at random.

16. In regard to the findings of the Joint Committee against Item 11, it is submitted that The Joint Committee has not done the real work assigned to it by the Hon'ble Tribunal. Its reply is not relevant at all to the facts brought out by the Applicant. The Joint Committee has not examined whether the ITC has been consistently adhering to all the 12 guidelines which were framed by the CPCB in September 2019, as per the Order dated 24.05.2019 passed by the Principal Bench of the Hon'ble Tribunal in the O.A. 348 of 2017. That monitoring work was not the one assigned to the TNAU by any enforcing agency. The TNAU does not have the power of enforcement which is vested only in the TNPCB. The TNAU has employed 20 times more effluent water

than is consented, for growing experimental crops. The TNPCB simply endorses whatever was done by the TNAU and abdicates its duty of proper enforcement.

17. In regard to the findings of the Joint Committee against Item 12, it is submitted that the Joint Committee has given its reply without keeping in view the Terms of Reference in the order dated 02.01.2020 passed by the Hon'ble Tribunal. The Joint Committee was assigned "**to oversee the.....steps taken**" by the industrial units. The accusation was that the ITC did not have the impervious storage tank for storing the effluent for a minimum period of 15 days capacity during the period of low/no demand based on the irrigation management plan, as per CPCB guideline No. 3 (vi). The Joint Committee failed to examine it during its visit. It is refusing to answer the question straight even now. The Joint Committee can only say whether that impervious storage tank is there or not as per the CPCB guideline or whether it considered that guideline of the CPCB unnecessary. The reply now given by the Joint Committee clearly shows that it had not done its work earnestly to protect public interest.

18. In regard to the findings of the Joint Committee against Item 14 & 15, it is submitted that The Joint Committee was assigned the work of examining the extent of pollution in the river water "**throughout the stretch**", as could be seen from the Terms of Reference in the Order dated 02.01.2020. But the Committee has not gone beyond the territorial limits of Coimbatore District. The report of the Joint Committee does not help the Hon'ble Tribunal in arriving at the right decision. It did not take and analyse samples from at least 120 points, after mapping the cropping pattern, crop age, soil type, etc., Each sample should have an aggregate of minimum 10 sub-samples in an area, which meant $120 \times 10 = 1200$ points as per the standard procedure. It is a fact that the Joint Committee has given a subjective and superficial report.

19. In regard to the findings of the Joint Committee against Item 16, it is submitted that The Joint Committee now accepts the fact that there is no STP in the industry. It tries to condone such non-existence by elaborating on aeration, settling, etc., The

Joint Committee does not provide any direction issued by the CPCB which authorizes the authorities for such condonation.

20. In regard to the findings of the Joint Committee against Item 17, it is submitted that The Joint Committee did not take note of the fact that the ITC does have its thermal power unit boiler at just 150 metres away from the Kandiyur Reserve Forest of Nilagiri bio-reserve.

21. In regard to the findings of the Joint Committee against Item 18, it is submitted that the Directorate of Natural Resources Management of the Tamil Nadu Agricultural University conducted research on the pollution by ITC, and some of its findings had been reported by the TNPCB on 31 03.2016 in Page 290 at SI No. 5. The findings were that the water in the vicinity of the ITC was unfit for drinking, domestic consumption and agricultural purposes and that the soil samples showed higher PH value which would lead to more than 50% reduction of crop yields. The Joint Committee did not take this fact into account while giving its findings.

22. In regard to the findings of the Joint Committee against Item 20, it is submitted that the construction of STP and UGSS in Mettupalayam Municipality does not have any connection or relevance with the drinking water supplied to Mettupalayam from the river Bhavani. Because the intake-well for Mettupalayam is situated above the point of letting out the treated water from the STP now constructed by the Mettupalayam Municipality. It is, therefore, essential for shifting the point of supply of water to Vilamarathur as prayed for.

23. In regard to the findings of the Joint Committee against Item 21, it is submitted that The demand of the people of Mettupalayam which was reflected in the Resolution dated 11.06.2015 was just in accordance with the precedent set in the year 2012 in respect of Kaundanpalayam-Vadavalli project in the year 2012 by the TWAD Board. But the Joint Committee did not examine this aspect.

24. In regard to the findings of the Joint Committee against Item 22, it is submitted that The need for the closure of two unviable barrages which are the cause for

increased pollution in summer season and their negative cost-benefit ratio have not been dealt with by the Joint Committee. These are essential factors contributing to the pollution and stagnation. The Joint Committee ignores the importance of this point without assigning any reason, which they are not empowered to do.

25. In regard to the findings of the Joint Committee against Item 23, it is submitted that The Joint Committee knows that the pipeline of the ITC runs from the river to the company for a length of only 3 kilometres. The Joint Committee tries to cover up this fact.

- a. The Joint Committee report does not take reality into picture. It does not explain why it became necessary for the ITC to supply drinking water to the farmers in its neighbourhood. Its reply in Para 38 diverts the focus from the core issue raised in Para 10 (d) (ii) of the Written Submission dated 02.11.2020.
- b. The Joint Committee has not disproved the findings of the World Wildlife Fund in its study conducted during the years 2015, 2016 and 2017 about the pollution in the Kallaru river which is a tributary to the Bhavani river, and the water in the upper reaches, citing the Terms of Reference about Bhavani river, as mentioned in Para 10 (d), (e), (f) and (g).
- c. The TNPCB did not keep in view all these facts while granting expansion and periodically renewing every year its consent, and that too, based on the self-assessment report.

26. In regard to the findings of the Joint Committee against Item 24, it is submitted that The Joint Committee did not draw any samples for analysis from the Kallaru river which, actually, brings in the municipal effluents of Coonoor Town of Nilagiri district to the Bhavani river at a point above the intake-well that supplies water to the town Mettupalayam and the Umaipalayam Barrage. The extent of pollution at that point of the river is material to decide the quantum of further pollution. It is technically essential on the part of the Joint Committee to take samples from the confluence point of Kallaru river also, when it falls clearly within Coimbatore district. But the same Joint

Committee had flouted the Terms of Reference by not-taking samples throughout the stretch of the Bhavani river as mandated by the Hon'ble Tribunal in its Terms of Reference.

27. In regard to the findings of the Joint Committee against Item 25, it is submitted that The Joint Committee did not pay any attention to the upper reaches of the river Bhavani from Barrage-I to Nellithurai, the point where the river emerges out of the forest. The Joint Committee ought to have examined the pollution there as there are three major sources contributing to pollution.

28. In regard to the findings of the Joint Committee against Item 26, it is submitted that in respect of the supply of drinking water to Karamadai area, the intake well was shifted from south bank and relocated at the west upstream of the North bank, due to higher TDS there.

29. In regard to the findings of the Joint Committee against Item 27 & 28, it is submitted that Quantum of Water flow in the river throughout the year, especially in summer, was not examined. The minimum critical flow of the river water in the summer and the extent of pollution at that time are Relevant Facts to the Facts in Issue in this case. But the Joint Committee did not examine it and has not given any specific reply too, in Para 42 and 43 of its report, with reference to the facts submitted in Para 10 (h) & (i) of the Written Submission dated 02.11.2020.

30. In regard to the findings of the Joint Committee against Item 29, it is submitted that the offences proved in the earlier case, O.A. 26 of 2019 continue to be perpetrated by the ITC. It is submitted that the submissions of the Applicant in his Written Submission dated 02.11.2020 have not been analysed by the Joint Committee in depth. It is, therefore, prayed that the submissions made therein and the original affidavit may be pleased to be read by the Hon'ble Tribunal as part and parcel of this Written Submission too, as the issues raised therein require judicial notice and intersession.

Prayer:

31. It is submitted that the Hon'ble Tribunal may be pleased to reject the report of Joint Committee for the following infirmities:

- a. The members of the Joint Committee did not even understand the locations of the upper level intake point that supplies water to Mettupalayam and the lower level outlet point that discharges the municipal effluent of Mettupalayam, Their projection of the STP and UGSS under construction as a panacea for the problem in question, as per their reply against items 19, 20 and 21, is apparently and absolutely wrong. The prayer of the Applicant for shifting the supply point to Vilamarathur near Nellithurai is, therefore, lawful and gets justified by the tendency of the Joint Committee to advance irrelevant reasons.
- b. It is an unassailable fact that the commissions and omissions, deliberate or negligent, of the Respondents in this case, have alone been the primary and basic cause for the pollution in the water of the river Bhavani, which made the Hon'ble Tribunal first to initiate action *suo motu*. As the Joint Committee was dominated only by the Respondents in this case, its report has ended up as a one-sided version of the case camouflaging the reality.
- c. The report, in essence, protects the interest of the erred and erring public servants and not the public interest, as could be seen from its reply against items 46 to 56. The report of the Joint Committee does not, therefore, present the complete and comprehensive picture of the pollution in the Bhavani river and the problems caused to the people in the field.

It is, therefore, prayed that the Hon'ble Tribunal may reject the report of the Joint Committee and, thus, render justice.

Dated this 30th June 2021 at Chennai.

(E. Maragatha Sundari)
Counsel for the Applicant

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O.A. No. 58 of 2017

T. T. Rangasamy,
President,
Bhavaani Nadhineer Matrum Nilaththadi
Neer Paadhuhaappuk Kuzhu,
(*Bhavani River Water and Ground Water
Protection Committee*),
Mettupalayam - 641301
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State Government of Tamil Nadu through
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**Written Submission
Of the
Applicant**

R. Natarajan
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(E. Maragatha Sundari)
9444277378

Counsels for the Applicant