

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI**

ORIGINAL APPLICATION NO. 34 of 2015 (SZ)

IN THE MATTER OF:

S. Pugazhendi & Ors.

...Applicants

Versus

Union of India & Ors.

...Respondents

**BRIEF WRITTEN SUBMISSIONS FILED ON BEHALF OF THE
APPLICANTS DATED 9.02.2021**

MOST RESPECTFULLY SHOWETH:

1. That the above titled Application was filed under Section 14 of the National Green Tribunal Act, 2010 raising substantial questions related to environment defined under Section 2 (m) of the Act where the community at large is affected due to the continuing pollution and contamination of water sources by the industries operating in SIPCOT, Cuddalore, Tamil Nadu. The residents in the SIPCOT Cuddalore have been suffering from hazardous water quality due to chemical contamination along with rapidly falling water tables, caused due to the inadequate and improper infrastructure of the industries operating in this Chemical Industrial Complex.

2. That the constant pollution and contamination of the water bodies as well as ground water caused by these industries not only puts human health at serious risk but also amounts to gross violation of the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974. Thus, the petition also seeks remediation of the environment under Section 15 and 20 of the National Green Tribunal Act, 2010.
3. That the present brief submissions are being filed in addition to the written submissions dated 18.01.2021 filed on behalf of the Applicants, the contents of which are not being repeated for the sake of brevity. The Applicants would like to respond to the oral submissions made by the SIPCOT and SIPCOT Industries' Association on 02.02.2021.
4. That at the outset, it is pertinent to note that neither of the Respondents have denied that there is no problem of contamination. However, they have simply stated and relied upon the Joint Committee Report dated 11.11.2019 to state that there is no "significant" environmental damage. However, they have completely failed to respond to the finding with respect to the dismal CEPI score with respect to water pollution.
5. That the Applicants would like to make the following submissions:-
 - i. **On the issue of locus standi:** The Applicants are directly affected by the continuing pollution by the SIPCOT Industrial Area, Cuddalore and they are representing the serious issues faced by the entire community residing in 27 villages around the SIPCOT Industrial Area. Further, the Applicants are members of the SIPCOT Area Community Environmental Monitors (SACEM) which is a

community based. It is further submitted that the Respondents have tried to conflate the issues before this Hon'ble Tribunal by trying to portray that the Applicants are seeking clean up of the entire Cuddalore District. The Applicants have only raised the issue with respect to water pollution and ground water contamination within the SIPCOT area and its impact on the surrounding 27 affected villages.

ii. The Applicants are not making mere allegations regarding

pollution and heavy metal contamination: It is submitted that there are several documents on record which have over the years clearly established that the SIPCOT area is facing a serious threat of groundwater and surface water contamination. For the sake of this Hon'ble Tribunal's convenience, the Applicants are referring to these findings hereinbelow:

a. SACEM report on Groundwater in SIPCOT-(Annexure A-3 @54-63)

- Findings and Analysis @ 57
- Cr, Cd and Pb- in excess of BIS standards for drinking water.
- Suggestions @ 60

b. Reports/Affidavits filed by TNPCB:

- **Reply dated March 2015 @ 85-105: Groundwater Details for 2010-2011 @93-** lead parameters exceeding amongst other pollutants.
- **Affidavit dated 29.09.16 in compliance of NGT order dated 7.09.2016- @140-146:** Lead in all samples, and Iron in 1 exceeding parameters-@ 142-143

- **Reply dated 15.11.2016- @176-183-** Lead, Iron and Nickel exceeding. **@181**
- c. CPCB Reply dated 26.06.2015- @106-**Mercury, Lead, Nickel manganese and Iron exceeding- **@110-139**, Water sample analysis results **@116**
- d. Joint Inspection report dated 11.11.2019:**
 - The Table at Para 3.1 (**@4-5** of the report) clearly shows that the ZLD system (both RO as well as the MEE systems) was not working efficiently and thus, not able to treat the effluents in a proper manner. This was the finding with respect to all 10 operational industries which were inspected by the Joint Inspection Team.
 - Iron, Zinc, Copper and Nickel was found in the raw effluent and MEE concentrate of M/s Asian Paints, M/s DFE Pharma (I) Ltd.
 - High levels of Copper and Nickel was found in the RO reject of M/s Amcor Flexibles (I) Ltd.
 - Poor reject management of MEE was observed with respect to M/s Chemplast Samnar Ltd.
 - Findings related to Nickel, Copper and Iron in the effluents of 13 out of 15 industries which are engaging the services of the common marine disposal system (CUSECs). (**@7-8** of the report)
 - Findings related to heavy metal presence in Uppannar River. (**@11-12** of the report)
 - Finding in relation to poor implementation of CEPI Action Plan and no improvement in relation to water quality. (**@12-13** of the report)
- iii. That the Respondents have tried to mislead this Hon'ble Tribunal by stating that there is no environmental problem in SIPCOT Cuddalore region. It is clear from the above findings of TNPCB,

CPCB as well as the joint committee, that this is not the case. Thus, the statement made by the SIPCOT Association in its written submission at para 45 that *“There are no environmental issues at present in SIPCOT Cuddalore area and the applicants are trying to drag in decade old air pollution issues that are completely resolved as on date with the sole intention to cause prejudice to the industries”* is purely based on surmises and conjectures and is a figment of their imagination. The Respondents have tried to cull out a new principle of environmental law that directions for remediation ought to be issued only when the situation is “shocking” or “grim”. This is clearly contrary to the established principle of precaution and prevention which have been accepted as being part of the law of the land by the Hon’ble Supreme Court as well as this Hon’ble Tribunal. Further, it may be noted that the onus of proof is on the Respondents as has been clearly enunciated by the Hon’ble Supreme Court in the matter of ***AP Pollution Control Board v. Prof. MV Nayadu***, reported in **(1999) 2 SCC 718**. It is submitted that in the present case, the Respondents have failed to discharge their burden of proof that there is no pollution or contamination in the SIPCOT Cuddalore region.

- iv. That the Applicants would also like to reiterate that despite such serious findings in the joint inspection report dated 11.11.2019, the report has given a completely contradictory and baseless conclusion that there is “no significant environmental damage”.

Further, the report does not give any recommendation with respect to remediation or action to be taken against the violators.

- v. That in fact in a recent judgment of the Hon'ble Supreme Court, in the matter of ***Hospitality Association of Mudumalai v. In Defence of Environment and Animals*** reported in **2020 SCC OnLine SC 838**, the Hon'ble Supreme Court has held in categorical terms that "*The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation.*"

- vi. No assessment of health impact:** Despite such glaring findings regarding levels of heavy metals such as Lead, Cadmium, Nickel and Mercury as well as copper and iron in the ground as well as surface water samples, the Joint Inspection Committee never assessed the impact of the same on the communities who have been residing around these industries. The Committee has not met a single member of the community or conducted any sort of testing, or given any details of such an exercise if it has been undertaken.

6. That therefore, the Applicants reiterate the submissions made on 18.01.2021 and humble request this Hon'ble Tribunal to pass the following directions: -

- i. Direct payment of environmental compensation as per the assessment of the CPCB for the damage caused to the environment by the polluting industries in the SIPCOT Cuddalore Region as per the polluter pays principle.

- ii. Direct the assessment of extent of damage and cost of remediation of the groundwater in SIPCOT Cuddalore area by an independent agency such as the Environment and Water Resource Division, IIT-Madras
 - iii. Direct that the cost of such assessment and remediation is borne by the industries operating in SIPCOT as well as SIPCOT in terms of the Polluter pays principle.
 - iv. Direct that the CEPI Action Plan to be prepared by TNPCB be prepared after proper consultation with stakeholders including the affected communities;
 - v. Direct for a proper assessment of health impacts on the communities residing around the SIPCOT Cuddalore region, i.e. the 27 affected villages by an independent agency such as the Department of Community Medicine, JIPMER Pondicherry
 - vi. Until such an exercise of assessment and remediation takes place, water be supplied to all affected villages for their drinking and domestic use.
7. That it is submitted that this Hon'ble Tribunal may pass such orders in order to uphold the environmental rule of law. This has been held in the recent judgment of the Hon'ble Supreme Court in the matter of ***Himachal Pradesh Bus Stand Management and Development Authority (HPBSM&DA) v. Central Empowered Committee and Ors.*** (decided on 12.01.2021) reported in **2021 SCC OnLine SC 15**. The relevant part of the judgment is reproduced hereunder:-

“57. In an article in the Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio7:

“One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made.”

58. The point, therefore, is simply this - the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.

*...
64. ...The role of courts and tribunals cannot be overstated in ensuring that the ‘shield’ of the “rule of law” can be used as a facilitative instrument in ensuring compliance with environmental regulations.”*

In the present case, it is clear that there has been a serious failure on part of the SIPCOT as well as SIPCOT Industrial Association to ensure full compliance of the environmental regulations, especially the provisions of the Water (Prevention and Control of Pollution) Act, 1974. There is a clear and serious threat to public health due to the rapidly increasing contamination of ground water as well as surface water.

FILED BY:

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