

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

APPLICATION NO. 240 OF 2016 (SZ)

In the matter of

P. Palkunan
52/1A, Sarakal Vilai
Edalakkudi Post, Nagercoil
Kanyakumari District



Vs

...Applicant

1. The District Collector
Kanyakumari District

2. The District Environmental Engineer
Tamilnadu Pollution Control Board
Nagercoil, Kanyakumari District

3. The Commissioner
Nagercoil Municipality
Nagercoil

4. M/s. Devisree Metals
Rep. by its Proprietor
35/2B3, Sarakal Vilai
Edalakkudi Post, Nagercoil
Kanyakumari District

...Respondents

Counsel appearing for the appellant

M/s. B. Tamil nidhi, A. Muthu Esakki

Counsel appearing for the respondents

For respondent Nos. 1 & 3 ... M/s. E. Manoharan

For respondent No. 2 ... Mrs. Rita Chandrasekar

For respondent No.4 ... Mr. D. Naveen Duraibabu

ORDER

Present

Hon'ble Shri Justice Dr. P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

Delivered by Justice Dr. P. Jyothimani

12th September, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The above application which was filed in the High Court of Judicature at Madras in its Madurai Bench as W.P.(MD).No.11167 of 2012 stood transferred to this Tribunal by an order of the High Court dated 7.9.2016.

2. The application is for a direction against the respondent No.1 to 3 to take action against the 4th respondent unit for causing noise pollution, apart from dust pollution by manufacturing metal scraps, causing environmental hazard by the unauthorised metal company run by the 4th respondent in the name of Devisree Metal Company in the residential area.

3. The case of the applicant is that he has constructed a house in the name of his wife after obtaining approval from the Town Planning Authority and is residing there with his family consisting of his father aged 88 years and two school going children. Adjacent to the house of the applicant, the 4th respondent is running the metal scrap company in Door No.35/2B3, manufacturing utensils using high capacity electric motors in lathe machines, polish machines and grinding machines causing noise and vibrations and also allowing yellow colour metal scraps thrown into the atmosphere. It is stated that the 4th respondent has not obtained any permission from the Municipality for installing the above machines in the residential area as per the District Municipalities Act, 1920. The noise level of the 4th respondent unit is more than the permissible limit in the residential area and even the employees of the 4th respondent are wearing protection masks to safeguard themselves from the noise and scraps. In spite of the complaint, the 3rd respondent – Municipality failed to take any action and therefore a complaint was sent to the 2nd respondent – Tamil Nadu Pollution Control Board (Board). The 2nd respondent has directed the 3rd respondent to take action against the 4th respondent company. The 3rd respondent has informed the applicant under the Right to Information Act that no permission to install high power machinery has been granted to the 4th respondent. Since the complaints given to the 2nd and 3rd respondents have not been acted upon, the applicant has approached the High Court by filing the above writ petition since his right to life guaranteed under Article 21 of the Constitution of India has been affected.

4. The 2nd respondent – Board in its reply dated 16.7.2014 filed before the High Court has stated that the 4th respondent in the letter dated 17.9.2012 has informed that he has obtained Trade Licence from the Nagercoil Municipality and registered his unit as Small Scale Industry in the District Industries Centre. He has also obtained 'No Objection' from the nearby residents except the complainant. It is further stated that an Ambient Noise Level Survey was conducted in the vicinity of the unit by the Deputy Chief Scientific Officer, Mobile Environmental Laboratory of the TNPCB, Thoothukudi. The report of analysis dated 8.10.2012 shows that the noise level during the operation of the unit adheres to the standard prescribed by the Board.

5. The 2nd respondent – Board in its further report dated 21.4.2017 filed by the District Environmental Engineer, Nagercoil has referred to a complaint received by the Board at Nagercoil through the District Collectorate, Kanyakumari District on 5.9.2011 filed by the applicant complaining about the operation of the 4th respondent unit. The complaint was forwarded to the Commissioner, Nagercoil Municipality on 29.11.2011 for taking action against the said unit under the District Municipalities Act, 1920 and also under Health Act. It was pursuant to the same, the 4th respondent, through its Proprietor in the letter dated 17.9.2012 has stated that he has obtained Trade Licence from the Nagercoil Municipality and registered as Small Scale Industry in the District Industries Centre, as stated above. While reiterating the Ambient Noise Level Survey in its report dated 8.10.2012 stated above, wherein the Board has found that the 4th respondent adheres to the Noise Level Standards prescribed by the Board, has referred to the direction of this Tribunal dated 16.1.2017 directing the District Environmental Engineer, Nagercoil to conduct a fresh inspection about the Ambient Noise Level in the presence of the applicant as well as the 4th respondent. It is stated that pursuant to the said direction, notice was served to the applicant and the 4th respondent on 1.3.2017 and the 4th respondent unit was inspected on 8.3.2017. The Board has stated that on inspection, the following were observed:

“1.The petitioner and the proprietor of the unit were present during the inspection.

ii. The unit was involved in the manufacturing of brass lamps (kuthuvilaku) of various sizes, according to the orders received.

iii. The unit utilizes grinding machine, polishing machine and sizing machine of capacity ½ HP, 1 HP and 2 HP, respectively.

iv. The proprietor of the unit informed that the unit will be operated intermittently depending on the demand.

v. The proprietor of the unit has obtained trade license from Nagarcil Municipality and has registered as small scale industry in District Industries Centre.

vi. The proprietor of the unit has also furnished the copy of the NOC obtained from the nearby residents except the complainant.

vii. About 3 ft. Gap was maintained between the complainant's house and the 4th respondent unit and there is no opening/window in the proprietor's wall side. Hence the possibility of noise reaching complainant's house is very less.

viii. The proprietor of the unit informed that the complainant has mainly lodged this noise complaint against him only due to personal enmity between them regarding land dispute."

6. Therefore, the report specifically states that there are 3 ft gap between the complainant's house and the 4th respondent unit and there is no opening/window in the unit's side wall and the possibility of noise reaching the complainant's house is very less. That apart, it is the case of the 4th respondent that it is because of the personal animosity the application has been filed. It is further stated in the report that the 4th respondent unit is using grinding machine, polishing machine and sizing machine of only capacity of ½ HP, 1 HP and 2 HP respectively.

7. The 4th respondent – project proponent in its reply filed before the High Court dated 19.1.2015 has raised an issue of maintainability of the writ petition after the judgment of the Hon'ble Supreme Court reported in BHOPAL GAS PEEDITH MAHILA UDYOG SANGATHAN & OTHERS VS. UNION OF INDIA & OTHERS (2012) 8 SCC 326 since the remedy is before the National Green Tribunal. As the matter stood transferred to this Tribunal, the maintainability issue no longer survives. It is stated by the 4th respondent that the application has been filed only to wreck vengeance due to personal animosity as the applicant attempted to grab the property by way of sale for a paltry amount. It is stated that the 4th respondent unit was started in 2007 in the name of Vasantham Metals and later on, the name was changed as Devisree Metals. The applicant has not raised any objection for more than four years for the reasons best known to him. It is stated that put together, the applicant will be using only 3.5 HP capacity motors which cause only minimum noise which is within the permissible limit.

The Board has inspected the premises and reported that the noise level by the 4th respondent is within the permissible limit prescribed under the Noise Pollution (Regulation and Control) Rules, 2000 even for residential area. It is stated that the unit is a micro unit and the electricity consumption is only 180 units and high power motors are not used. It is further stated that the unit is run strictly between 8.30 A.M and 5.00 P.M and will be closed at 6.00 P.M and therefore there is absolutely no nuisance to any one living in the nearby area. The Board has inspected the unit twice and found that the allegations made by the applicant are unfounded.

8. The applicant has appeared in person and submitted that pursuant to the direction of this Tribunal the Board has conducted an inspection on 8.3.2017 but it was not conducted in a proper manner. It is his case that the Board officials have not brought any instrument to measure the noise level. It is his further case that the Board instead of stating that the distance between the 4th respondent unit and the applicant's house is 3 feet, should have referred to the noise level. It is his further case that during inspection actually the unit was not functioning except the switch was on. Therefore, he has stated that during the functioning of the 4th respondent unit there has been noise and smell.

9. On the other hand, it is the contention of the learned counsel appearing for the 4th respondent that when the Board has inspected the place twice and gave a report stating that the noise level of the 4th respondent unit is within the permissible limit, there is no compelling reason shown by the applicant to disbelieve the report of the Board.

10. On a reference to the report of the Board dated 21.4.2017 which is based on an inspection conducted pursuant to the direction of this Tribunal, it is seen that the 4th respondent unit is having grinding machine, polishing machine and sizing machine of capacity of $\frac{1}{2}$ HP, 1 HP and 2 HP respectively. This fact is not disputed by the applicant. A reading of the representations made by the applicant also shows that the complaint against the 4th respondent is mainly in respect of noise. It is now available on record that the 4th respondent has obtained Trade License from the Nagercoil Municipality and registered as Small Scale Industry in the District Industries Centre and it also appears to be a fact that except the applicant no other neighbours have raised

any objection about the running of the unit by the 4th respondent. It is on record that based on the complaint of the applicant, there was a noise level survey conducted by the Board regarding the functioning of the 4th respondent. The analysis report dated 8.10.2012 shows that it was done on random/frontal parameters between 09.00 Hrs and 10.15 Hrs. The analysis report shows that the monitoring has been done before the operation of the unit and during its operation. The parameters found during the operation of the unit are as follows:

Sl. No.	Location	Duration (Min)	Distance (m)	Direction	Sound Level – dB(A)					
					Leq	L ₉₀	L ₅₀	L ₁₀	Min	Max
1	Inside Molding section unit	15	4	Source	54.1	51.2	54.2	56.4	50.6	61.1
2	Inside Buffing section unit	15	4	Source	53.8	56.9	56.2	60.1	54.2	63.8
3	Inside Polishing section unit	15	4	Source	54.3	50.1	57.3	63.4	44.7	61.2
4	In complainants' House	15	4	W	53.8	47.9	54.1	69.8	47.3	59.8

11. Likewise, the parameters found before the operation of the unit was found as follows:

Sl. No.	Location	Duration (Min)	Distance (m)	Direction	Sound Level – dB(A)					
					Leq	L ₉₀	L ₅₀	L ₁₀	Min	Max
1	Inside Molding section unit	15	4	Source	45.0	37.9	44.3	76.4	34.9	59.0
2	Inside Buffing section unit	15	4	Source	41.9	41.0	51.0	71.4	39.5	45.7
3	Inside Polishing section unit	15	4	Source	47.3	41.3	51.0	70.1	36.7	57.6
4	In complainants House	15	4	W	47.2	37.9	48.8	74.2	44.3	54.2

It is on a comparison of the said parameters, the Board found that the noise level was well within the prescribed standard.

12. In the light of the admitted fact that the 4th respondent unit is using 3 motors with total capacity of 3.5 HP which is within the permissible limit of 5 HP motor and in the light of the detailed analysis report of the Board dated 8.10.2012, there is absolutely no reason for this Tribunal to come to a conclusion that the noise created by the 4th respondent unit is beyond the permissible limit. Under the Noise Pollution (Regulation and Control) Rules, 2000, a statutory Rule framed by the Government of India, as per the powers conferred under the Environment (Protection) Act, 1986, the Schedule contains Ambient Air Quality Standards in respect of noise relating to residential area. It is the admitted case of the applicant that in this case the limit is 55 dB during day time and 45 dB during night time. It is the specific case of the 4th respondent that he is not running the unit during night hours. However, we make it clear that the Board shall ensure that the 4th respondent shall not run the unit after 6 PM and upto 8 AM. The analysis report shows that this being a residential area, the noise level during the day time is within the prescribed limit.

13. Rule 7 and 8 of the Noise Pollution (Regulation and Control) Rules, 2000 are as follows:

“7. Complaints to be made to the authority.—(1) A person may, if the noise level exceeds the ambient noise standards by 10 dB(A) or more given in the corresponding columns against any area/zone (or, if there is a violation of any provision of these rules regarding restrictions imposed during night time) make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provision of these rules and any other law in force.

8. Power to prohibit etc. continuance of music sound or noise.—
(1) If the authority is satisfied from the report of an officer in charge of a police station or other information received by him (including from the complainant) that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:--

(a) the incidence or continuance in or upon any premises of—

(i) any vocal or instrumental music

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers,

public address systems, horn, construction equipment, appliance or apparatus) or contrivance which is capable of producing or reproducing sound, or

(iii) sound caused by bursting of sound emitting fire crackers, or

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

(2) The authority empowered under sub –rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1) either rescind, modify or alter any such order:

Provided that before any such application is disposed of, the said authority shall afford to the applicant and to the original complainant, as the case may be,) an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.”

They enable the authorities to take action if noise level exceeds beyond the standard of 10 dB(A).

14. The authority who is entitled to take action on such complaint is defined under Rule 2(c) which is as follows:

“authority” means and includes any authority or officer authorized by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force.”

15. Therefore, even if the noise level is beyond the permissible limit, the applicant has got an effective remedy available under the statutory rules by making a complaint to the Police or Magistrate, as the case may be. In such circumstances, in our considered view, the applicant must first approach the Authority notified under the Rules for any remedy even if the conduct of the 4th respondent results in violation of Rules prescribing permissible noise level. It is true that in the analysis report of the Board dated 8.10.2012 the noise level of the 4th respondent unit is within the permissible limit.

16. It is equally true that in case the noise level of the 4th respondent unit increases due to various reasons in which event it is the duty of the 4th respondent to restrict and bring down the noise level within the permissible limit as per the Rules. In the report filed before this Tribunal dated 21.4.2017 the Board has stated that even on

the inspection conducted on 8.3.2017 the noise level was within the permissible limit. However, there is no analysis report filed. We make it clear that if the applicant makes any complaint of excess noise level created by the 4th respondent, the Board shall make proper inspection and conduct analysis and submit a copy of the report to the applicant based on which it will be always open to the applicant to act as per the statutory Rules, as enumerated above.

17. In so far as it relates to the dust pollution, even though there is nothing placed before this Tribunal by the applicant to substantiate his case, we make it clear that the Board shall constantly supervise the functioning of the 4th respondent unit regarding the dust pollution and take appropriate action in the event of such pollution caused by the 4th respondent. In addition to that, the Board shall give necessary instructions to the 4th respondent to prevent any noise level or dust pollution affecting any of the neighbours.

Except the above direction and giving liberty to the applicant to work out his remedy as per the statutory Rules, the applicant is not entitled for any relief claimed in this application, the application stands closed. There shall be no order as to cost.

As the main application stands disposed, M.A.No.200/2016 closed

Justice Dr.P.Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member

NGT