

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.291 of 2013

(W.P.No.9802 of 2012 of Kerala High Court)

In the matter of

1.K.M. Aliyar

2. Eldhose Alias Mamoottil

3. Mohammed K.M

4. V.A. Abdul Salam

5. A.G. George

6. M.M. Aliyar

.. Applicants

Vs.

1. Kothamangalam Municipality, Rep. by its Secretary.

2. Kerala State Pollution Control Board,

Rep. by the Chief Environmental Engineer, Kochi.

3. The District Medical Officer of Health, Kochi.

4. Palappillil Specified Block Rubbers Pvt. Ltd.,

Karukadam, rep. by its Managing Director

.. Respondents

Counsel appearing for the applicants

M/s. Rajan Vishnuraj & Harish Vasudevan

Counsel appearing for the respondents

M/s. A.V. Arun & R. Vinoth Kumar for R1

Smt. Rema Smrithi for R2, Smt. Suvitha A.S. for R3

M/s. S. Elambharathi, A.Senthilnathan, K. Sunitha

K. Raveendran & S. Deepika for R4

O R D E R

Present:

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

Hon'ble Prof. Dr.R. Nagendran, Expert Member

5th January, 2016

On 16.11.2015, we have passed a detailed order, incorporating the observations made by the 2nd respondent Board after inspection and ultimately we have also observed that the 4th respondent project proponent is agreeable to fulfil and comply with all the recommendations made by the Board and in those circumstances, we felt that no useful purpose will be served in keeping the application pending and therefore directing the applicant to take legal course as and when the permissible limit is exceeded by the 4th respondent during its operation, we directed the Board to take appropriate steps whenever such objections are raised in the manner known to law.

2. Subsequently, on a request made by the learned counsel appearing for the applicant that on the date of passing the order, the learned counsel was unable to be present and there was a representation made on his behalf through another counsel who has not properly presented the fact and taking note of the fact that the order which was dictated was not signed by both of us, we have allowed both the parties to put forth their submissions again.

3. Accordingly, both learned counsel appearing for the applicant as well as the learned counsel appearing for the 4th respondent have made their submissions. In fact learned counsel appearing for the 4th respondent has also filed objections to the suggestions made by the Board referred to in our earlier order.

4. It is now brought to the notice of this Tribunal that the present application which was transferred from Hon'ble High Court of Kerala was originally filed as Writ Petition W.P.No.9802 of 2012. However, subsequently, the applicant himself has moved another Writ Petition filed before the High Court of Kerala in W.P.(C).No.9136 of 2014. Even though that writ petition was in respect of the order passed by the Tribunal for Local Self Government Institutions, Trivandrum which was under challenge, the Hon'ble First Bench of High Court of Kerala in the judgement rendered on 15.12.2014 in W.A.No.1715/2014 has considered the environmental issue raised by the present applicant in the said Writ Petition and found that there are no grounds for apprehension of pollution. While holding so, the Division Bench upheld the order passed by the learned Single Judge. Therefore, according to the learned counsel appearing for the 4th respondent, the Hon'ble First Bench of the Kerala High Court has taken note of pollution aspect and given its categorical finding that there is no reason to conclude that by the conduct of the 4th respondent, pollution has been caused and in such circumstances, the present application should be dismissed as infructuous.

5. Even though the said argument is attractive, as we have taken note of the submission made by the Board which has fairly suggested some compliance to be carried out by the Project proponent, we are of the view that as ordered earlier, the recommendations of the Board must be directed to be complied with by the 4th respondent, in the interest of maintaining environment.

6. Therefore, we dispose of the application in the same lines as that of the earlier order dated 16.11.2015 which are as follows:

“With the consent of both the counsel the application is taken up for final disposal.

2. We have heard the learned counsel representing the learned counsel appearing for the applicant as well as the respondents as against the report filed by the 2nd respondent – Kerala State Pollution Control Board. The applicant has filed an objection and rejoinder.

3. The issue raised in this case is for a declaration that the functioning of the 4th respondent crump rubber factory at Mathirappilly, Karukadam Post, Kothamangalam, Ernakulam District is illegal and violative of the fundamental right guaranteed under Article 21 of the Constitution of India, as the said functioning of the 4th respondent unit is causing air, water and noise pollution and the unit is functioning without valid licence.

4. In the report filed by the 2nd respondent the Board has made the following observations at the time of inspection:

- i. The machines are housed in fully enclosed room*
- ii. The packed column in the scrubber unit is revamped*
- iii. The pond present in the nearby premises is filled up with red earth*
- iv. The treated effluent is reused in the process*
- v. It is also verified that the industry was operating in two shifts only i.e., from 6 am to 10 pm*
- vi. It was noticed at the time of inspection that water was flowing through the storm water drains and sample was collected from it and analysed*

5. As far as the result of effluent sample analysis is concerned, the sample collected from tanks and storm water drain and treated effluent sample were analysed. The following are the result of effluent sample analysis:

Sample Source: Raw effluent from collection tank

| Sl.No | Parameter | Unit | Result |
|-------|--------------------------|------|--------|
| 1 | pH | - | 6.5 |
| 2 | Suspended Solids | mg/L | 1602 |
| 3 | Biological Oxygen demand | mg/L | 1080 |

| | | | |
|---|----------------|------|-----|
| | (BDO) | | |
| 4 | Oil and Grease | mg/L | BDL |

Sample Source: Sample collected from storm water drain

| Sl.No | Parameter | Unit | Result |
|-------|--------------------------------|------|--------|
| 1 | pH | - | 7.1 |
| 2 | Suspended Solids | mg/L | BDL |
| 3 | Biological Oxygen demand (BDO) | mg/L | 2 |
| 4 | Oil and Grease | mg/L | BDL |

Sample Source: Treated effluent sample

| Sl.No. | Parameter | Unit | Result | Tolerance Limit |
|--------|--------------------------------|------|--------|-----------------|
| 1 | pH | - | 7 | 6.5-8.5 |
| 2 | Suspended Solids | mg/L | 12 | 100 |
| 3 | Biological Oxygen demand (BOD) | mg/L | 9 | 30 |
| 4 | Oil and Grease | mg/L | BDL | 10 |

In respect of the ambient air monitoring, the parameters are slightly beyond the limits prescribed viz., 111 microgram/Nm³ while the limit is 100 microgram/Nm³. The sound level was also measured and at the boundaries of the factory while the factory was in operation and it is stated that the sound level on the southern side was measured when the shutter was closed as 52 dB(A), sound measured when shutter was opened as 62.8 and base sound

while industry was not in operation was measured as 44.9. Likewise, on the northern boundary the sound was 52.3 dB(a), on the eastern side between the industry and ETP it was 65 dB(A) and on the western boundary it was found to be 57 dB(A). The sound level on the eastern and western side were found to exceed the permissible limit of 55 dB(A). The value of respirable particulate matter has also exceeded the permissible limit of 100 microgram/m³. It is also stated that the Board has given necessary direction to rectify the defects. The learned counsel appearing for the 4th respondent has submitted that those defects have infact been rectified as stated in the letter of the 4th respondent dated 18.9.2015.

6. In such view of the matter, we are of the considered view that no useful purpose will be served in keeping the application pending, except directing that if and when the permissible limit is exceeded by the 4th respondent during its operation, it will be always open to the applicant to raise appropriate objection and the Board shall take all necessary steps in the manner known to law.

With the above direction, the application stands closed. There will be no order as to cost.”

Justice Dr.P. Jyothimani

Judicial Member

Prof.Dr.R. Nagendran

Expert Member