BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No. 126 of 2014 (SZ)

M/S Chemical Construction Company Pvt. Ltd.,

Represented by its Managing Director Mr. O. V. Nambiar,

956/957, Thiruvottiyur High Road, Chennai 600 019. ..... Applicant

Vs

1. The Tamil Nadu Pollution Control Board

   Represented by its Chairman,

   No. 76, Anna Salai, Guindy, Chennai 600 032.

2. The District Environmental Engineer,

   Tamil Nadu Pollution Control Board,

   NO.77A, South Avenue Road,

   Ambattur Industrial Estate, Chennai 600 058.

3. The District Collector,

   Thiruvallur District.

4. The Superintending Engineer, EDC- North,

   TANGEDCO (TNEB)

   5, A Block, 144, Anna Salai, Chennai 600 002.

5. The Assistant Engineer (O & M),

   TANGEDCO (TNEB), Thiruvottiyur Post,

   Chennai 600 019.

6. M/S Masjid- E- Thaha & A1-Jamiyathul Kamaliya Trust,

   Represented by its President, No.958/250, T. H. Road,

   Kaladipet, Thiruvottiyur, Chennai.600 019. ..... Respondents

Counsel for the Applicant

1. M/s. S. Suthakar
2. M/s. K.S. Viswanathan

Counsel for the Respondents

1. Smt. H. Yasmeen Ali- R1, R2
   M/s. M.K . Subramanian
2. M/s. M. R. Gokul Krishnan- R3
3. M/s. P. Gnanasekaran- R4, R5
4. M/s. Mohan – M.G Balamurugan R 6

ORDER

QUORUM:

Hon'ble Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Professor Dr. R. Nagendran (Expert Member)

Delivered by Hon'ble Justice P. Jyothimani (Judicial Member) Dated 3rd July 2015

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1) Whether the judgement is allowed to be published on the internet ----- yes / no

2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. This application is filed by the applicant company, challenging the order of the first respondent, Tamil Nadu Pollution Control Board dated 25-04-2014, by which, invoking powers under section 31 A of the Air (Prevention &Control of Pollution) Act, 1981 and

section 33A of the Water (Prevention &Control of Pollution) Act1974, the Board has directed the closure of the applicant unit on the ground that the unit is carrying on its activities without consent from the Board and operating the steel fabrication unit in a mixed residential zone without permission from CMDA apart from stating that on survey of the noise level on the complaint of the 6th respondent Mosque, it was found that the noise level of the unit was 66.7 dB as against the permissible level of 55 dB and directed closure of the unit.

2. The case of the applicant is that they are engaged in the business of manufacturing of fabricated equipment for edible oil refineries, solvent extraction plants etc., having established in the year 1961 in the disputed premises, having taken lease from its owner under a registered lease agreement dated 28-04-1962 initially for a period of 50 years with option to renew for a further period of 49 years. According to the applicant, it has obtained the necessary permissions from the Directorate of Industries, Commercial Tax Department and obtained the Import- Export Code from the Ministry of Commerce, Government of India. According to the applicant, after the demise of the original lessee, T.V. P. Nambiar, the present Managing Director being his legal heir, has continued the business and lease was also renewed. The main operation done at the factory is light fabrication involving processes like rolling of plates, edge separation & preparation, welding and finishing and the workshop is spread over 88 grounds with covered space of 6000 sq m. After inspection by the Pollution Control Board, a show cause notice was issued as to why action should not be initiated for running the unit without consent and also about the complaint raised by the adjacent Mosque about noise pollution caused by the unit. A reply was sent to the effect that the business was run much before the Mosque was constructed and that the complaint is with vested interest and consent would be obtained from the Board.

3. It is stated that in respect of the property where the unit is situated, there are some title dispute between the applicant and one Mr. Bashir Ali and a civil suit is pending. It is stated

that the applicant has also approached the High Court by filing W.P. No11010 / 2013 for certain directions and the High Court has also directed to provide police protection, against which the said third party has filed an appeal in W. A.No1098 / 2013 and the High Court has passed an interim order on 09-05-2013 that both the parties are entitled to be in possession of the property and ultimately the appeal stood disposed by recording an undertaking that the said third party will not interfere and in the meantime the civil court will decide the dispute. When there was further interference to his business by the third party, the petitioner again approached the High Court and there was an order of interim injunction and permission to repair the damaged portion measuring 6.59 acres in the building of the company which is situated in 956/957 T. H. Road, Chennai.

4. The applicant is stated to have applied for consent to establish and operate on 24-01-2014 under Air (Prevention and Control of Pollution) Act 1981 & Water (Prevention and Control of Pollution) Act 1974, which was returned on 04-02-2014 on various grounds including that the building plan approval from CMDA has not been furnished, that the unit is situated in the mixed residential zone and commercial zone and therefore the engineering and fabrication units are not permitted as per CMDA 2026 Master Plan. The applicant is stated to have appeared in person and explained and thereafter the application for consent was stated to have been resubmitted on 01-03-2014.There was a noise level survey conducted by the second respondent on 18-02-2014 and on 07-03-2014 and again the application was returned on the ground that the unit is situated in the CRZ and hence clearance is required from the authority under the CRZ Notification. According to the applicant, the said notification does not apply as the applicant has established the unit in 1991 itself. Before the applicant could explain the same, the impugned order came to be passed directing the closure of the unit.

5.The impugned order is challenged on the grounds that, it is against the principles of natural justice as the copies of the reports on the noise level have not been supplied to the applicant,

that the reasons adduced in the impugned order are untenable as the respondent Board on one occasion has taken the stand that there was a lack of approval from CMDA, and on the other occasion it has taken a different stand on CRZ clearance which are all untenable, that the noise level survey conducted is totally untenable, that from 1961 the unit has been functioning and there has been no complaint from anyone and the complaint made by the Mosque now is motivated, that the Board has for the first time raised the objection of not obtaining consent after 50 years of the running of the unit in the same area, that there was no proper evaluation of the issues and everything has been done in a hasty manner, apart from other grounds.

6. In the reply affidavit filed by the respondents 1&2 Board, it is stated that on a complaint received from the 6th respondent Mosque that the applicant unit is generating noise beyond permissible levels, the officials of the Board have conducted an inspection on10-12-2013 in which it was observed that the applicant which is an engineering fabrication unit was producing process plant equipment (MS Steel /SS steel)-12 Nos. /month (or) 300T /month, that the unit is surrounded by vacant land on the east, T.H. Road on the west, a school by name 'Our Lady Higher Secondary School' on the north and the complainant Mosque on the south, that the process of the unit consist of receipt of MS plates, SS plates, cutting using O_2 or LPG (2 Nos.), welding through electrodes (7 Nos.), machining, fixing, grinding (3 Nos.), obtaining MS and SS steel structures of required size, inspection and packing for dispatch, that the noise generated by the unit affects the Mosque as well as the Arabic School conducted therein as both the unit as well as the Mosque are located in SF no 227, 228, that as per land use classification map of Thiruvottiyur village received from the CMDA, SF. No227 is denoted as a mixed residential, and SF No 228 is denoted as commercial area, that the type of engineering and fabrication units are not included as permissible use by CMDA in the mixed residential use zone, that it was observed that the unit has obtained 80 KW

power (107.2 HP) for welding and 20 KW(26.8 HP) for cutting & grinding operation from the TNEB (Total-134 HP) to carry out the fabrication activity.

7. According to the Board, the activities of the unit are not permissible in the Mixed Residential and Commercial area and that the unit has been running without any valid consent and therefore a show cause notice was issued on 18-12-2013 under section 25 of the Water (Prevention and Control of Pollution) Act 1974 as amended in 1988 and the Air (Prevention and Control of Pollution) Act 1981 as amended in 1987. A reply was sent by the applicant on 28-12-2013 which was not satisfactory as the unit was not having a valid consent. However, on a personal hearing conducted on 07-02-2014 when the complainant and the applicant were present and at the request of the unit a noise level survey was conducted which revealed that when the unit was in operation the noise level was 66.7 dB(A) as against the standard of 55 dB(A). It is stated that the unit has applied for consent on 24-01-2014 and the application was returned on 04-02-2014 for want of detailed building plan approval and also stating that the unit cannot be permitted in the Mixed Residential and Commercial area as per CMDA 2026 Master Plan. However, the applicant resubmitted the application on 03-03-2014 without details and hence the application was again returned to the unit on 12-03-2014 for want of details along with clearance under CRZ Notification- 2011. As no compliance was made, the unit was directed to be closed under the impugned order. The applicant has resubmitted again without details on 01-07-2014, based on which the applicant unit was inspected on 11-07-2014 and again returned for want of details. It is brought to our notice that the Tribunal has passed an order on 01-05-2014 while admitting this application, directing to restore electricity supply only for the purpose of running the administrative office of the applicant unit and further directing the Board to conduct a fresh inspection regarding noise level. There was a further direction on 11-06-2014 in M.A.No.130/2014 that the unit

may resubmit its application for consent without obtaining approval from the District Coastal Zone Management Authority.

8. The 5th respondent Electricity Board has stated in its reply that the electricity supply to the unit was disconnected on 26-04-2014 as per instructions of the Board and was subsequently reconnected only to the administrative office of the applicant.

9. The 6th respondent Mosque, which was newly added as a party, in the reply has stated that it is not only a religious place of worship for Muslims in the area, but it is also imparting education to the youth in the Madarasa School preaching Quran and the running of the unit has caused air and water pollution and complaints were lodged before the concerned authorities. As the applicant has admitted that they are carrying on their unit without consent they are liable for prosecution. While reiterating the stand of the Board regarding CMDA Master plan 2026, it is stated by the 6th respondent that the decibel level of the sound generated by the applicant unit was admittedly above the prescribed standard as the noise level survey was conducted in the presence of the applicant. It is also the specific case of the 6th respondent that the unit is not situated beyond 1.5 km from the High Tide Line (HTL) as falsely stated by it. On the other hand, according to the 6th respondent, the unit is situated within 300 m. from the High Tide Line. Therefore, it is obligatory on the part of the unit to obtain necessary permission from the authority under CRZ. Even if the unit was in operation before the Air and Water Acts came in to force, within three months from the date of commencement of the Act, the unit should have obtained consent. It is also stated that the personal dispute between the unit and others is not within the domain of this Tribunal. The applicant is involved in solvent extraction, physical and chemical refining, spent earth recovery system and fatty acids as advertised by the unit itself and therefore such a unit cannot be permitted in the mixed residential zone.

10. The Board has also filed a status report dated 15th September 2014. Apart from narrating all the above said facts relating to noise level of the unit, it is stated that most of the area of fabrication shed belonging to the applicant unit comes under residential zone rather than commercial zone and the permissible level of noise during day time for residential zone is 55 dB. The technical report filed by the Joint Chief Environmental Engineer of the Board in November 2014 has given the technical details on the machinery in operation during inspection namely, gas cutting machine, welding, 2 surface grinding machines, hammering and column structure for fabrication and assembling outside the shed. By an order dated 29-01-2015, an Advocate Commissioner was appointed who, after inspection has filed a report dated 19-02-2015. The learned Commissioner was to measure the distance between the High Tide Line and the applicant's unit. The learned Commissioner has identified the HTL (High Tide Line) with GPS Officer (Global Positioning Officer), Tamil Nadu Coastal Zone Management Authority. He has made measurement at three points, one, the western gate of the company facing Thiruvottiyur High Road, two, the compound wall of the company at far east and three, the HTL at the east as identified by the GPS officer. According to the report, the measurement between point 1 and 2 namely within the company's western gate and eastern wall as 169.65 meters. The distance between point 2 and 3 namely between the company's eastern compound wall and HTL is measured as 258.80m.The distance between point 1 to3 namely the company's western gate and HTL as 428.45 m. The learned Commissioner has also filed the sketch, map and photos.

11. It is the contention of Mr. K.S Viswanathan, learned Counsel appearing for the applicant that it was only the high levels of noise which was alleged against the applicant unit at the first instance in December 2013 even though the unit was in existence from 1961. When the applicant could satisfy based on the noise level survey made on 25- 08- 2014 that there was only a slight difference in noise level between the time when the factory was not in operation

and the time when the operation was on and therefore it was the contributory noise due to other extraneous factors and it was thereafter, difference stands have been taken by the Board regarding the building plan approval from CMDA, that a part in mixed residential zone and the other part in commercial zone and that the fabrication units are not permitted in mixed residential and commercial zone as per CMDA 2026 master plan. It was thereafter that the Board has raised for the first time in 2014 that unit is located in CRZ area. According to the learned counsel, as the CRZ notification has come into effect from 6-01 -2011, and even before the previous notification was issued in 1991the unit was in existence, the notification has no application to the applicants unit. It is his submission that even the CMDA classification is not applicable especially when the Thiruvottiyur Municipality has approved the master plan of 1974, no new zonal classifications will have retrospective application. The learned Counsel referred to the Judgment of Hon'ble Supreme Court reported in (2010) 5 SCC 388 to contend that the intention of the legislature while issuing 1991 notification was to protect the actions taken before the 1991 notification. According to him, there is absolutely no basis for the Board to act on the complaint of the 6th respondent especially when no other person in the area has made any compliant against the unit. He has also raised the issue of non application of mind on part of Board in not even ascertaining whether CRZ notification is applicable or not. When the CRZ notification itself is not applicable, there is no question of taking into account the measurements made by the Advocate Commissioner. He further submits that the Board should have passed order on merit by imposing certain conditions and reasonable penalty for not approaching it earlier for consent.

12. Per contra, it is the contention of Mr. T. Mohan, the learned Counsel appearing for 6th respondent that on an inspection conducted in the factory on 10- 12- 2013 upon the complaint given by the 6th respondent it was found that the unit has been carrying on its operation without obtaining prior valid consent from the Board and therefore it is in violation of s. 25 of

Water (Prevention and Control of Pollution) Act 1974. For the statutory violation the applicant is liable for proper and appropriate action and even as on date there is no consent given by the Board. The noise level survey conducted on 07- 02- 2014 by the Board in the presence of the applicant revealed that the noise level in the applicant unit was 66.7 dB as against the permitted level of 55dB. He has also raised an objection that since the applicant has challenged only electricity disconnection order and not the direction for closure, it is not open to the applicant to raise any issue on the closure order. However, it is relevant to note at this stage that M.A. No. 121 of 2015 filed by the applicant for amendment to include in the main prayer of the original application, the challenge relating to the order of 1st respondent for closing the unit was allowed by an order dated 25- 04- 2015. Therefore this aspect of the contention is no more available to the respondents. Mr. Mohan also would submit that on 01- 05- 2014 when the Tribunal passed an order admitting the application, there was only an interim relief to the applicant to run its administrative office alone making it clear that the industrial activity shall not be carried on. In fact the applicant at that time submitted that he was taking steps to present the papers for obtaining consent before the Board after getting approval from the District Coastal Zone Management Authority after fulfilling all necessary requirements and thereafter he changes his stand and moved an application for exemption from approaching the Coastal Zone Management Authority under the false information that the industry is situated at a distance of 1.5 km away from HTL. But on inspection by the Advocate Commissioner, the distance between compound wall of unit from HTL was found to be 258.80m and therefore it is situated within the prohibitive distance. After seeing the report the applicant now takes a different stand that the CRZ notification itself is not applicable, which according to him is not tenable in law.

13. The learned Counsel has also pointed out certain factual inconsistencies in the stand of the applicant who in one place has stated that the unit was in existence from 1957 but

subsequently has chosen to state that the lease agreement was executed in 1962 but at the same time he claims that the workshop was functioning from 1961 onwards. Even in respect of the extent in which the unit was running, the applicant has taken contradictory stand namely that in one of the document it is seen that the extent of the unit in which the operation is being run is 15000 sq ft shed and 700 sq ft RCC roof. But in another place he has chosen to state that the unit is running in 6000 sq m of shed and no copies of license issued under the Tamil Nadu District Municipalities Act 1920 by the Health Officer has been produced. Even in respect of approval of the building plan, while it was stated that the plan was approved during 1961 he has produced a recent copy of the plan approval of the year 1986 but it is seen that the approval of plan is by the Chief Inspector of Factories. It is the submission that noise level of unit has been proved to be beyond the permissible limit and admittedly the applicant's unit is situated within the prohibitive distance of CRZ notification and therefore the applicant is not entitled for any relief. Even as per the revised master plan it is seen that at least from 2008 the factory of the nature of the applicant cannot be permitted. Even it is alleged that the plan approval by Thiruvottiyur Municipality is only a proposal submitted by applicant for office building. The very prayer of the applicant to consider the application for consent dated 24- 01-2014 shows that the applicant has conceded that it requires consent for establishment and to operate. Further, the CRZ notification would be applicable in the light of Advocate Commissioner's report which states clearly that the unit is situated within the prohibitive distance. He would rely upon a Judgment of Supreme Court reported in AIR (2007)14 SC 447 to substantiate his contention that the land use and FSI regulations as on date of CRZ notification dated 19-02- 1991 would govern the sites falling within the CRZ. He contends that the Judgment of Supreme Court relied upon by the learned Counsel appearing for applicant, reported in (2010) 5SCC 388 is not applicable. But he would rely upon another Judgement reported in (2010) 2 SCC 27 where the Apex Court has held that the

construction without sanction and approval from competent authorities are unlawful, against public interest and hazardous. Therefore he submits that the order of the Pollution Control Board cannot be assailed and the application deserves to be dismissed.

14. The learned Counsel appearing for other respondents have also made their submissions supporting the impugned order passed by the Board. The learned Counsel appearing for the Board submits that it was found that the applicant's units have been carrying on its activities since many years without consent. As per s. 25 of water (Prevention and Control of Pollution) Act 1974, the applicant is not entitled to run the unit and in fact the applicant is liable to be penalised for the statuary violations. That apart, it is the contention of learned Counsel appearing for the Board that the analysis report found that the noise level is beyond the permissible limit and the unit is situated within the residential and commercial zone and therefore as per Master plan 2026 such units cannot be permitted. Later when it is informed that in addition to above facts the unit is located within the prohibitive distance as per the CRZ notification, the applicant was directed to approach the authority and then file necessary application. According to the learned Counsel, there are absolutely no illegalities or irregularities in the order passed by the Board and prayed for dismissal of the application.

15. After hearing the learned Counsel appearing for all sides and applying our mind after referring to various documents and pleadings, the issues to be decided in this case are crystallised as follows;

1. Whether the impugned decision or order passed by Tamil Nadu Pollution Control Board against the applicant unit is valid in law?
2. Whether the Coastal Regulatory Zone Notification issued by the Ministry of Forest and Environment 06- 01- 2011 is applicable to the applicant unit and whether the applicant is bound by the Master plans of CMDA 2026?

3. To what relief the applicant is entitled?

16. It is not in dispute that originally when the first respondent Board has passed the impugned order, the main thrust was that by the operation of the applicant unit, as complained by the 6th respondent Mosque, the noise level of the unit was 66.7dB (A) as against the standard 55dB (A) prescribed for the residential zone. It was also stated in the impugned order that the application for consent was returned for want of GFA and the detailed building plan approved from CMDA and it was also stated that the engineering and fabrication work of the unit are not permitted in the Mixed Residential, Commercial Use Zone as per CMDA Master Plan 2026. The application was again returned for another reason that CRZ clearance from the competent authority is required. It was for all the above said reasons the closure order came to be passed. A reference to the impugned order by which there was a direction to stop power supply also shows that unit was operating without valid consent from the Board. An objection was raised about the maintainability of the application saying that what is impugned in these proceeding is only a direction for disconnection of power supply and not the actual closure of the unit. However, in the pleadings the applicant has made clear reference about the closure order also. If at all there is any omission it is only accidental and in our view it should not stand in the way of considering the main issue for rendering substantial justice relating to environmental protection. In fact, we have also passed such order 27- 04- 2015 in M.A. No. 121 of 2015 allowing the applicant to raise the issue of closure as well in the main application. Therefore, the said preliminary objection stands over ruled and we propose to proceed to decide about the substantial issue involved in the case.

17. In so far as it relates to the alleged high noise levels, it may be true that the applicant unit was started much earlier and nobody in the area has raised any objection relating to the issue of noise having been created by the functioning of the applicant unit. But that does not mean

that the applicant can be permitted to generate noise much against the preservation of the normal life condition of the people living the area. The Air (Protection and Prevention of Pollution) Act 1981, while defining "Air pollution" states that it means the presence in the atmosphere of any 'air pollutant' as it is seen in Section 2(b) of the Act. In turn, the term "air pollutant" is defined in Section 2(a) of the Act to mean any solid liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. Section 19 of the Air Act enables the State Government after consultation with the State Pollution Control Board, by a notification in the Official Gazette to declare any area as Pollution Control Area. It is not in dispute that the area in which the applicant unit is situated is covered within the definition of Pollution Control Area.

18. It is seen that the applicant has been taking a consistent stand that its unit has been in existence for a long time namely, that a license has been obtained from the Inspector of Factories for running the unit as early as in the year 1961 and that the documents also show that at least from the year 1974 the unit has been functioning and therefore when the Air Act has come into operation in the year1981, the unit was in existence and therefore the standard of noise as may be prescribed by the competent authority cannot be made strictly applicable to the applicant. Section 17 (1) (g) of the Air Act empowers the State Pollution Control Board to lay down in consultation with the Central Board the Standards for emission of air pollutants into the atmosphere from industrial plants and auto mobiles. Section 22 of the Act prevents any person from operating any industrial plant discharging any air pollutant in excess of the standard laid down by the Board as stated above. It is in accordance with the said power, the Board has laid down the above standard of ambient noise level for residential Zone as 55 dB (A) during day time. This is the stipulation made in respect of various standards of noise level as per Noise Pollution (Regulation and Control) Rules 2000. In

respect of the existing units, Section 21 of the Act while referring to section 9 of the Air (Prevention and Control of Pollution) Amendment Act 1987 in which it was stipulated that consent is not necessary from the Board but the proviso to Section 21 specifically states that in respect of those units which are in existence they may continue to carry on the activity for a period of 3 months from the date of commencement of the said amendment Act or if it has made an application for consent, within the period of 3 months till disposal of the said application.

19. Therefore, the cumulative effect of the above said provisions of the Air (Prevention and Control of Pollution) Act 1981, makes it abundantly clear that units which were in existence at the time of the commencement of the Amendment Act 1987 stated supra, which came into force with effect from 01-04 -1988, can carry on their activities only for a period of 3 months and in the mean time make application for consent and if such application was pending, till disposal of the application the unit can carry on its functions. Applying the above said legal position to the facts of the present case in respect of noise levels, it is clear that after the 1987 Amendment Act, the applicant unit has applied for consent only on 24- 01- 2014 and the said application was returned on 4- 02 -2014 and subsequently returned again on 12 -03- 2014 for want of details. Therefore, there is no application pending with the Board as on date. In such view of the matter it is certainly not open to the applicant unit to raise the objection that the noise standard prescribed by the Board is not applicable or the applicant unit being the old one which was in existence even before the Amendment Act of 1987 is not obliged to follow the standard is absolutely meaningless. Such stand will thwart the very object of the Act. Therefore, the contention raised on behalf of the applicant unit on the applicability of the binding effect of the directions of the Board stands rejected.

20. The noise level survey report in respect of the applicant unit filed by the TNPCB dated 27-08-2014 makes it very clear that even though there appeared to be some back ground

noise and therefore even when the unit was not in operation, the noise level was in excess, when the unit was in operation, the noise level has far exceeded the limit. For example, when the unit was not in operation, in the first floor of the 6th respondent Mosque as well as in the front of the work shop of the unit, the noise level was 82.1dB(A) and when the unit was put into operation, the noise level has gone to 90.7dB(A). The nature of the functioning of the applicant unit admittedly includes cutting machines, welding, surface grinding machine (2 nos.) hammering and column structure for fabrication. In such view of the matter even assuming that the contention of the learned Counsel appearing for the applicant that the Board which has originally objected regarding noise pollution has subsequently extended its jurisdiction to other aspects, even on the point of noise levels, the contentions of the applicant unit has to necessarily fail and therefore the impugned order of the Board in so far as it relates to noise pollution cannot be said to be either illegal or unsustainable in law.

21. The next point about the CMDA Master Plan 2026, it is not in dispute that the place where the unit is situated is the Mixed Residential and Commercial Use Zone. The technical report of the Board makes it clear that in such zones the operations of the applicant unit are not permissible. One cannot say in such circumstances that the same is not point relevant for consideration by the Board. In any event it is for the applicant unit to satisfy the same as required by the Board and in accordance with law when the application for consent is represented with all required and full particulars. This leaves us to decide about the point relating to the necessity of CRZ Clearance about which we will discuss presently while dealing while issue No 2. In view of the same issue No 1 is answered to the effect that the impugned order of the Board directing closure of the unit cannot be said to be either invalid in law or against any of the legal principles. The issue is answered accordingly.

22. In so far as it relates to the Second issue about the applicability of CRZ Notification to the applicant, there is on record a detailed report of the Advocate Commissioner appointed by

this Tribunal dated 19-02-2015. In this regard it is necessary to narrate some of the earlier interim orders passed by this Tribunal. In the order dated 01-05-2015 while admitting the application, we have directed the applicant to run its administrate office making it clear that the industrial activity shall not be carried on. We have also permitted recording the submission made by the learned counsel appearing for applicant that as submitted by the applicant's Counsel it will be open to the applicant to obtain approval from the District Coastal Zone Management Authority and resubmit the application. However the applicant has filed M.A. No. 140 of 2015 for modifying the above said order relating to the approval from the District Costal Management Authority stating that unit is located 1.5 km away from the HTL and therefore there is no necessity to approach the District Costal Authority. Believing that, and as there was no objection, by our order dated 11-06-2015 we modified the earlier order to the effect that there is no need to approach the District Coastal Zone Management Authority seeking their approval. It was on 15-09-2014, the 6th respondent got itself impleaded. It was at the instance of 6th respondent an Advocate commissioner was appointed in MA No 19 of 2015 to make inspection and measure the distance between the unit and the HTL, as on the earlier occasion there was only representation that the unit was not situated within the prohibitive distance as per the Coastal Management Zone Regulation. The Advocate commissioner as stated above has filed a report dated 19-02-2015 after making measurements. He has made the measurements in 3 points by GPS method, the first point being the factory gate, the second point compound wall boundary and the third point HTL. In the report he has stated that the distance measured between the factory gate (point 1) and Compound wall Boundary (point 2) as 169.65m. Likewise the distance between the compound wall boundary (point 2) and HTL line (point 3) as 258.80m and lastly the distance between the factory gate (point1) and HTL (point3) has been measured as 428.45meters. Of course the Advocate Commissioner has also stated that between point 2 and point3, Ennore

Expresway passes in between and he has also observed that there are many industries on the Ennore Expressway.

23. Now the question to be decided is as to whether the CRZ Notification issued by the Ministry of Environment and Forest published in the Gazette of India dated 6-01-2011 is applicable to the applicant unit or not. Originally, the MoEF &CC and has issued Coastal Regulation Zone Notification by virtue of the powers under section 3(1) and section 3(2) (v) of the Environment (Protection) Act 1986 and Rules framed thereunder and the said notification was dated 19-02-1991. The said notification has declared the costal stretches of sea, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action up to 500m from the HTL and the land between LTL and HTL as Coastal Regulation Zone and imposed restrictions on setting up and expansion of industries, operations or process in the said Coastal Regulation Zone. The notification also defines the High Tide Line as the line on the land up to which the highest water line reaches during the spring time. There was a direction to all authorities to demarcate uniformly in the entire country the HTL as per the guidelines issued. The said notification of 1991 prohibits within CRZ setting up of new industries and expansion of existing industries except those directly related to water front or directly leading foreshore facilities and projects of department of Atomic energy. The notification has also made Coastal Area Classification and Development Regulations for the purpose of regulating development activities on the costal stretches within 500m of HTL on the landward side. The notification has made 4 categories in that regard.

24. While areas in Category no 1 (CRZ 1) are treated as ecologically sensitive, it included the area between High Tide Line (HTL) and Low Tide Line (LTL) and are areas which are rich in genetic diversity and likely to be inundated due to rise in sea level consequent upon global warming etc, Category 2 (CRZ 2) are areas which are already situated up to or close to the shore line and treated as “developed area” which means to be the area within the municipal

limit or other legally designated urban area which is already substantially built up and has been provided with drainage and approach roads and other infrastructure facilities such as water supply and sewerage mains. Likewise, category 3 (CRZ 3) are as tend to be relatively undisturbed, neither belonging to category 1 or 2 which includes coastal zone in rural areas and also areas within municipal limits but not substantially built up. Category 4 (CRZ 4) relates to coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands except CRZ 1, CRZ 2 or CRZ 3. The notification of 1991 has originally declared to earmark 200 meters from the HTL as 'no development zone' which was subsequently made as 100 meters wherein no construction activities were permitted except for repairs of existing authorised structures not exceeding existing FSI. It was by virtue of an amendment to the notification dated 19-02-1991, which was dated 16-08-1994, the "no development zone" was relaxed to 50 meters from 100meters. That came to be challenged in Indian council for Enviro- legal action v. Union of India, reported in (1996) 5 SCC 281. The Hon'ble Supreme Court in the judgment rendered on 18-04-1996 has held that such reduction of no development zone was illegal and the power of Central government for relaxation of developmental activities in the 6000 km long coast line was unguided and capable of being abused, thus holding that reduction of no developed area from 100 meters to 50 meters by the amendment is not valid.

25. However, subsequently a question arose about the validity of constructions made between 100 to 50 meters when the case was pending before the Hon'ble Supreme Court based on the building plans issued pursuant to Coastal Regulation Zone Notification dated19- 02 -1991 as amended on 16-08- 1994. The mater was again taken to the Hon'ble Supreme Court, in Goan Real Estate and Construction Ltd and another v. Union of India and others, reported in (2008) 5 SCC 388. It is seen that an application was made to Panchayat to inspect the construction on land between 50 meters and 100 meters and the report indicated that foundation work has been completed up to the plinth area and in some of the areas construction work of the

building was completed and ready for occupation. During construction it appears that the Additional Collector was requested to report as to whether clearance under Coastal Regulation Zone norms had been obtained. The MoEF&CC has also clarified that new developmental activities to be carried out in the zone between 50 meters and 100 meters in the HTL would attract the provisions of CRZ Notification 1991 from the date of the order of the Hon'ble Supreme Court on 18 -04 -1996. An official of MoEF&CC has filed an affidavit before the Hon'ble Supreme Court on 12- 09- 2007, stating that any developmental activity which has been initiated between 16-08- 1994 and 18- 04 -1996 after obtaining all the requisite clearances from the agencies concerned including the Town and Country Planning Authorities should be construed to be an ongoing project and the Ministry has decided to place the matter before the National Coastal Zone Management Authority in the meeting to be held in October 2007. An argument was advanced before the Hon'ble Supreme Court that earlier Judgment dated 18- 04-1996, stated supra, has not issued any direction to demolish the existing structure and therefore the judgement of Hon' ble Supreme Court dated 18- 04- 1996 rendered in the case of, Indian Council for Enviro- legal Action, does not prejudice or affect either the completed construction or ongoing constructions. Therefore the question that arose for consideration before the Hon'ble Supreme Court in the case of, Goan Real Estate and Co Ltd, as referred to above was as to whether the constructions completed or ongoing constructions made pursuant to the plans sanctioned based on the notification of Government dated 16 -08 -1994 would be affected or not. The Hon'ble Supreme Court has observed after hearing all the parties in Para 29 as follows:

"*A critical study of the judgement in Indian Council for Enviro- Legal Action makes it clear that this Court has examined the validity of 6 amendments made by the notification dated 16-08-1994 in the notification dated 19-02-1991. Two out of the 6 amendments were found by this Court to be arbitrary and illegal and, therefore, they were*

struck down. When one part of the notification was found to be legal and another part of the said notification to be bad in law it would not be proper to construe the judgement affecting past transactions."

26. The Hon'ble Supreme Court has further held in categoric terms, in para 31 as follows:

"*It is well settled that an order of a Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgement of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as statute. Construction of judgement should be made in the light of the factual matrix involved therein. What is more important is the issues involved therein and context wherein the observations were made. Observation made in a judgement, it is trite, should not be read in isolation and out of context. On perusal of Para 10 of the judgement , it is abundantly clear that even under 1991 notification which is the main notification it was stipulated that all development and activities within Coastal Regulation Zone will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing notification of 1991 was to protect the past actions/transactions which came to existence before the approval of 1991 Notification."*

(Emphasis supplied)

Ultimately the Hon'ble Supreme Court concluded stating in Para 41 that "*for the forgoing reasons, the petition partly succeeds. It is declared that the judgement dated 18 -04-1996 in Indian Council for Enviro- Legal Action v. UOI , declaring part of the amending Notification dated 16-08-1994 to be illegal, will not affect the completed or the ongoing constructions being undertaken pursuant to the said notification. The Rule is made absolute to the extent indicated herein above. There shall be no order as to costs."*

27. Therefore it is clear that, even under the 1991 notification the Hon'ble Supreme Court has held that it protected the past transactions. The government of India in supersession of the 1991 notification and except in respect of things done or omitted to be done before such supercession has issued a fresh Coastal regulation zone Notification, effective from the date of notification namely 6-01-2011. The said notification while has made certain improvements to 1991 notification, has by and large retained the original intents of 1991 notification namely, restricting on the setting up and expansion of industries, operations etc., in the land area from HTL to 500 meters on landward side along the sea front, declaring the area between HTL to 100 meters as Coastal Zone Management Plans, declaring the land area falling between hazard line and 500 meters from HTL on the landward side, in case of sea front and in between hazard and 100 meters line in case of tidal influenced water body and the word " hazard line" denoting the line demarcated by the MoEF&CC through the Survey of India ,taking into account tides, waves, sea level rise and shoreline changes, the land area between HTL and LTL termed as intertidal zone and declaring the water and the bed area between LTL to the territorial water limit (12Nm) in case of sea and the water and the bed area between LTL at the bank to the LTL on the opposite side of the bank, as tidal influenced water bodies. The notification further prohibits in the CRZ, setting up of new Industries and expansion of existing Industries as stated in the 1991 notification. Therefore in so far as it relates to the existing industries even before 1991 notification which are saved, as declared by the Hon'ble Supreme Court also, the same are not affected by the notification of 2011 as well. Therefore it is immaterial especially in this particular case wherein, between the factory gate and High tide Line (HTL) the distance is 425.45meters and even between the compound wall and HTL the distance is 258.80meters. Taking note of the fact that the plan in respect of the applicant's workshop was approved as early as 23- 02-1961 and the new plan was approved on 29 -12 -2008, and admittedly on the basis of the said plan no new constructions

have been made, we are of the view that neither the CRZ notification of 1991 nor the CRZ Notification of 2011 create any bar to continue the existing structure as such especially in the light of the judgement of the Hon'ble Supreme Court of India. However, in the event of the applicant seeking to either go for expansion by putting up new construction by demolishing the existing one or otherwise, he shall be certainly bound by the restrictions imposed by the Coastal Regulation Zone Notification 2011, in which event, the applicant has to obtain consent/no objection from the authorities competent under the notification. In view of the categorical decision by the Hon'ble Supreme Court applying the same to the factual matrix of this case, we hold that for the existing structure of the applicant Industrial unit, it does not require any clearance under CRZ notification of 2011, except the applicant goes for the expansion of the unit by demolishing the already partly demolished unit.

28. Lastly, we have to reiterate as we have elaborately discussed in the first issue, that the applicant unit having started even according to the applicant, as early as in the year 1974 has not chosen to apply for consent from the Board even after the Air (Prevention and Control of Pollution) Act 1981 and the Water (Prevention and Control of pollution) Act 1974 have come into effect. In the absence of any application pending with the Board, as the Board has returned the papers, one cannot presume that the application is pending for consideration before the Board. Even otherwise the applicant has chosen to apply for consent only in the year 2013 and it means that applicant has been running the unit by creating air and water pollution for nearly 30 years after the Water (Prevention and Control Of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 have come into effect. In fact, the Air (Prevention and Control of Pollution) Act 1981 makes it very clear under section 21, that no person shall without previous consent of State Pollution Control Board, establish or operate any industrial plant in an air pollution control area, of course subject to proviso giving three months time as elicited earlier. Such restriction is found under section 25 of Water

(Prevention and Control of Pollution) Act 1974 also. No industrial activity can be permitted by disobeyance of the provisions of the law which is clear that without prior consent to operate nobody can be permitted to carry on Industrial activities. In the present case, the unit of the applicant which is a steel fabrication unit is certainly a polluting Industry, both under Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. Therefore, we are of the considered view that the applicant must be imposed with cost under the principle of 'Polluter Pays' before its applications are directed to be considered by the Board for granting consent to operate. Taking note of the nature of the activities carried on by the applicant over a substantial period, without obtaining consent, we impose an amount of Rs. 30/- lakhs to be deposited by the applicant unit under the 'Polluter Pays' principle, with the Principal Secretary, Government of Tamil Nadu, Department of Environment and Forest, within 4 weeks from today and on such payment the applicant will be permitted to file fresh application or represent the application stated to have been returned by the Board with full compliance. In such event, on receipt of proper acknowledgement for payment of such amount, it will be open to the Board to consider the application on merit and decide in accordance with law expeditiously in any event within a period of 8 weeks after such payment and making of complete application. We also make it clear that the applicant shall not be permitted to carry on any industrial activity till the application is considered by the Board and appropriate orders passed. Till then, power supply shall not be restored to the applicant unit except to carry on its administrative office.

29. For the reasons detailed above, the application stands dismissed holding as follows:

1. The impugned order of the State Pollution Control Board, closing the applicant unit is valid in law.
2. The Coastal Regulation Zone Notification of 06-01-2011 issued by MoEF&CC is not applicable to the applicant unit as it exist today,

however make it clear that either by expanding or by demolishing the existing structure or otherwise or starting afresh, the applicant shall be liable to approach the authority under said notification.

3. The applicant shall pay an amount of Rupees 30 lakhs under the 'Polluter Pays' principle, to be deposited with the Principal Secretary , Government of Tami Nadu, Ministry of Environment and Forest within 4 weeks and there after resubmit or apply afresh to the Tamil Nadu pollution Control Board for consent to operate, in which event after having satisfied on acknowledgment of the payment made under 'Polluter Pays', as stated above, the PCB shall consider the application and pass orders on merit and in accordance with law expeditiously in any event within 8 weeks thereafter. There shall be no order as to the cost.

Dated 03-07-2015 Justice Dr. P. Jyothimani (Judicial Member)

Chennai

Prof. Dr. R. Nagendran (Expert Member)