

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

APPLICATION No. 118 of 2014 (SZ)

IN THE MATTER OF:

Prof. P. Murugaiyan (Retd),
S/o Ponnusamy,
No.117 B, Thendral Nagar,
Udayarpalayam Road,
Sendhurai – 621 714
Ariyalur District

... Applicant

Versus

1. The District Environmental Engineer,
The Tamil Nadu Pollution Control Board
No.25, SIDCO Industrial Campus,
Thuvakudi, Trichy-15.
2. The Commissioner,
Sendhurai Town Panchayat,
Sendhurai, Ariyalur District.
3. The Proprietor,
Sri Mahalakshmi Sweets & Bakery,
Opp. to Govt. Girls Hr. Secondary School,
Thendral Nagar, Udayarpalayam Road,
Sendhurai-621 714, Ariyalur District

... Respondents

COUNSEL APPEARING:

APPLICANT ... M/s. R. Sethuvarayar and V. Raghavan

RESPONDENTS ... Srimati Yasmeen Ali for Respondent No.1; M/s Abdul Saleem, S. Saravanan and Srimati Vidhyalakshmi Vipin for Respondent No.2 and M/s S.Ramesh Kumar and S.Santhosh for Respondent No.3.

ORDER

PRESENT:

(1) Hon'ble Shri Justice M. Chockalingam
Judicial Member

(2) Hon'ble Shri P.S. Rao
Expert Member

1. Whether the judgment is allowed to be published on the internet:
YES/NO

2. Whether the judgment is to be published in the All India NGT Reporter:
YES/NO

1. The applicant herein has filed this application seeking for directions to the 2nd respondent to evict the Bakery and Sweet Stall run by the 3rd respondent from a residential area in accordance with the inspection report filed by the 1st respondent.

2. The facts of the case as seen from the averments made in the application are that the applicant, a resident of Sendhurai Town in Ariyalur District, is residing with his wife and differently abled son in a purely residential area wherein the 3rd respondent has put up and running a Bakery and Sweet Stall by name and style *Sri Mahalakshmi Sweets and Bakery* (hereinafter bakery).

3. The applicant states that the 3rd respondent while preparing the bakery items is polluting the air thereby spoiling the entire atmosphere and the drainage water discharged from the bakery is causing water pollution. The people who are residing in and around the area are suffering a lot and the applicant's differently abled son is affected with due to the pollution. The applicant has requested the 3rd respondent to vacate and to set up the bakery in a non-residential area but he denied to shift it and hence the applicant has made a representation to the 1st and 2nd respondents for taking steps to relocate the bakery from the residential area.

4. In connection with the complaint lodged to the District Collector, Ariyalur District on public grievance redressal day, the 1st respondent conducted the site inspection on 18.03.2013 and has sent a report dated 20.03.2013 to the 2nd respondent for taking further action. The inspection report sent by the 1st

respondent is still pending with the 2nd respondent who has not taken any action in accordance with the rules and regulations. A petition dated 19.04.2013 signed by all the residents of the colony was submitted to the 2nd respondent and further, the applicant has requested the 2nd respondent through a petition to take appropriate action on 13.05.2013 which went unheeded.

5. The applicant contends that the 2nd respondent is the authority to provide/cancel license and they ought not to have issued license to operate the 3rd respondent's bakery. The 2nd respondent ought to have implemented the inspection report of the 1st respondent and should have evicted the 3rd respondent bakery from the residential area.

6. On the basis of the complaint filed by the applicant on 16.10.2012 the 1st respondent Dist. Environmental Engineer (DEE), Trichy investigated the matter and informed the 3rd respondent *vide* letter dated 22.10.2012 which was also forwarded to the District Collector, Ariyalur District that to control the emission of smoke and oil from the aforesaid bakery unit, chimney has to be erected and firewood stoves to be replaced with gas stoves. Again a complaint was received from the applicant on 18.03.2013 and it was investigated and found that a country stove is being used with wood powder and gram husk as fuel causing pollution and affecting the nearby residents. Hence, the complaint was forwarded to the Commissioner, Sendhurai *Panchayat* Union *vide* DEE, Trichy letter dated 20.03.2013 to take action against the respondent no. 3 under law relating to the local bodies. The Commissioner, Sendhurai *Panchayat* Union was again reminded *vide* letter dated 19.05.2014 to take action against the respondent no. 3.

7. During the course of hearing of the case on 26th November, 2014 considering the fact that in spite of giving notice twice, the 3rd respondent failed to appear before the Tribunal and since the Counsel for the applicant was pressing for

interim relief stating that the 3rd respondent bakery unit, located in a residential area, is causing pollution affecting the health of the residents and his family members, the Tribunal felt it necessary to appoint an Advocate Commissioner to inspect the premises of the 3rd respondent duly taking into account the averments made by the applicant in the application as well as the report filed by the respondent Pollution Control Board (PCB) and submit a detailed report. Accordingly, the Advocate Commissioner visited the premises of the bakery of the 3rd respondent on 7th March, 2015 to assess the exact working condition of the bakery and to find out if there is any violation of rules and regulations. During inspection, applicant as well as the respondents was present in person. The Advocate Commissioner in her report which has been filed before this Tribunal on 30th March, 2015, has reported the following actual position as observed during her inspection of the premises in question:

- i) *It is a fact that the 3rd respondent is running a manufacturing unit of bakery products as well as sweets and 'kaarams' in the said locality which is a residential area;*
- ii) *The 3rd respondent is using wood stove/ country stove for making sweets and 'kaarams' with saw dust as raw material for the stove leading to release of fumes into the atmosphere causing pollution. However, for making bakery products the 3rd respondent is using an oven;*
- iii) *Flooring of the unit is not properly maintained and cleanliness is missing in the premises indicating that the unit is running in an unhygienic manner;*
- iv) *Ashes released from the stove are not disposed properly and thrown outside into the streets along with other wastes such as vegetable peels, egg shells etc.;*
- v) *Fly trap is also missing in the unit.*
- vi) *The 3rd respondent has not registered the bakery and therefore it is unauthorized without any valid license obtained from local civic authorities. He has also failed to obtain permission from the competent authority i.e. Food Safety and Standards Authority of India (FSSAI).*

8. Apart from enlisting the aforesaid deficiencies as observed by her, the Advocate Commissioner has also suggested certain steps for preventing pollution from the unit of the 3rd respondent.

9. The 3rd respondent filed his reply on 22nd July, 2015 stating that his unit is not causing any damage to the environment and he has taken up manufacturing activities as per traditional methods and there is no violation of any law much less the pollution control laws. However, as per the Advocate Commissioner's report, he complied with the suggestions and started manufacturing the bakery products in a safe manner without causing pollution duly observing the safety standards and after duly obtaining license from FSSAI *vide* Registration No.22415004000048 and he could fulfil all the statutory requirements. Moreover, he switched over to gas stove and the height of the chimney was raised to ensure that emission does not affect the neighbour's house. He also stated that the entire flooring has been re-laid and is neatly maintained. The solid wastes are not thrown into the streets but are disposed properly. The waste water is disposed into the sewer line maintained by the local municipality and thus the manufacturing unit is not causing any water/air/noise pollution and registration certificate to the unit was issued after due compliance of all the statutory requirements after complying with all the conditions of Food Safety and Standards Act, 2006.

10. Notwithstanding the clean chit given to himself by the 3rd respondent, the Tribunal felt it appropriate to direct the concerned DEE to make an inspection and submit a factual position as to whether any deficiencies are still existing in the unit and any damage is being caused to the environment by emitting pollutants into the atmosphere because of the activities of the unit of the 3rd respondent.

11. Accordingly, the DEE, Ariyalur submitted a status report on 31st July, 2015 stating that the unit of the 3rd respondent i.e. *M/s Sri Mahalakshmi Sweets and*

Bakery was inspected on 27th July, 2015 and found that the unit is using LPG stove for running the bakery oven and wood chips and gram husk are used as fuel in country stove for preparation of sweets and *kaarams*, the house of the applicant is located about 50 metres away from the sweetmeat preparing section of the unit, the unit has provided 28 feet high stack/ chimney above the roof level for the sweet and *kaaram* preparation section, a collection cum settling tank to collect the waste water has been provided from where it is discharged into rain water channel 50 m away from the applicant's house and ash from the stove is collected and disposed in a separate tank without throwing it haphazardly. The DEE further reported that the 3rd respondent has proposed to shift the sweet and *kaaram* preparing section to the opposite side of the street within 4 months and to this effect written undertaking dated 28th July, 2015 was also given by the 3rd respondent which is enclosed with the status report of the DEE. The applicant also agreed with the above proposal of the 3rd respondent for shifting the unit.

12. The question formulated for consideration is whether the 2nd respondent has to be directed to evict the 3rd respondent's bakery from the residential area based on the grounds raised by the applicant in the application. As seen above, it is clear that the 3rd respondent is having bakery as well as sweet and *kaaram* manufacturing activity in the residential area and apparently the country stove/ wood stove for which bio mass is used as fuel is leading to emission of pollutants whereas the bakery oven which is run on LPG stove, is environment friendly and pollution free. Therefore, the question arises whether the use of the country stove for the production of sweetmeats which falls under the commercial activity does require any consent to be obtained from the PCB and if so any emission standards are prescribed for such activities. But, neither the respondent PCB nor the Advocate Commissioner made any comments in this regard. The Environment (Protection) Act, 1986 and rules made there under also do not speak anything

about standards prescribed for such activities except that sewage and solid waste generated has to be disposed as per law. However, nothing prevents the PCB to take action in case it finds pollution in the surroundings of the unit particularly air pollution by measuring Ambient Air Quality (AAQ) but no such findings have been produced by the PCB. Moreover, after the visit of the Advocate Commissioner, the 3rd respondent has taken all necessary measures to prevent pollution and also gave an undertaking to shift the unit manufacturing sweets and *kaarams* across the road which is away from the applicant's house. Therefore, it can be safely concluded that the applicant's grievance has been redressed to a large extent. However, in the absence of any specific rules and regulations, the question remains unanswered as to whether such small scale commercial activity of making sweets and *kaarams* and bakery products bereft of installation of any machinery and equipment and which cannot be termed as an industrial activity in a residential area, amounts to violation of any environmental laws. It is for the concerned civic authorities to take a decision as per prevailing local laws as to whether the unit can be permitted in the residential area. This Tribunal cannot comment on this aspect.

13. But it is always necessary for PCB to frame appropriate guidelines by fixing norms for such small scale commercial activities in residential areas with reasonable restrictions and prescribing the standards so that no pollution is caused and the business activities of such small traders who have got a Fundamental Right to carry on their business as per the Constitution, go unhindered without affecting their livelihood. Such regulatory measures by the PCB are quite necessary in such cases as no standards are prescribed in the notification under the Environment (Protection) Act, 1986 given by the Ministry of Environment and Forests and Climate Change (MoEFCC) and one cannot come to a definite conclusion to the understanding of the issue.

14. With the above directions, we dispose the application. No order as to costs.

(Justice M. Chockalingam)
Judicial Member

(Shri. P.S.Rao)
Expert Member

Chennai.
Dated, 2nd September, 2015