

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONAL BENCH**

**CHENNAI**

**Appeal No. 04 of 2014 (SZ)**

The Proprietrix

M/s. Sankar Blue Metals

No. 189, Magaral village and Post

Kancheepuram Taluk

Kancheepuram District

**.....Appellant**

**Vs.**

1. The Chairman

Tamil Nadu pollution Control Board

No.76, Mount Salai

Giundy

Chennai- 600 032

2. The District environmental Engineer

Tamil Nadu Pollution Control Board

539/3, Bazar Road, Balaji Complex

Sriperumpudur at Paddappai

Padappai- 601 301

3. The Appellate Authority

Tamil Nadu Pollution Control

Krishna Vilas

No.51, Gangadeeswarar Koil Street

Purasaiwakkam

Chennai- 600 084

**....Respondents**

**Counsel for the Appellant**

Mr. K.V. Subramaniam, Senior Counsel for M/s. TAAURAS Associates, Mr. Kamalesh Kannan and Mr. Sai Sathya Jith

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 1 and 2

**Appeal No. 05 of 2014 (SZ)**

The Proprietrix

M/s. Sankar Blue Metals

No. 189, Magaral village and Post

Kancheepuram Taluk

Kancheepuram District

**.....Appellant**



**Vs.**

1. The Chairman

Tamil Nadu pollution Control Board

No.76, Mount Salai

Giundy

Chennai- 600 032

2. The District environmental Engineer

Tamil Nadu Pollution Control Board

539/3, Bazar Road, Balaji Complex,

Sriperumpudur at Paddappai

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No.51, Gangadeeswarar Koil Street

Purasaiwakkam

Chennai- 600 084

**....Respondents**

**Counsel for the Appellant**

Mr. K.V. Subramaniam, Senior Counsel for M/s. TAAURAS Associates,

Mr. Kamalesh Kannan and Mr. Sai Sathya Jith

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 1 and 2

**Appeal No.08 of 2015 (SZ)**

M/s. R.K.V. Blue Metals

Represented by its Proprietor

Mr.R.Kathirvelu

S.F.No. 503/1,506

Sithalapakkam road

Magaral village

Kanchipuram District



सत्यमेव जयते

**....Appellant**

**Vs.**

1. The Appellate Authority  
Represented by its Chairman  
Gangadeeswarar Koil Street  
Purasaiwalkam  
Chennai- 600 084
2. Tamil Nadu Pollution Control Board  
Represented by its Member secretary  
No.100, Annasalai  
Guindy, Chennai-600 032
3. The District Environmental Engineer  
Tamil Nadu Pollution Control Board  
Sriperumbudur at Padappai  
No.539/3, Bazaar Street  
Padappai- 601 301

**....Respondents**

**Counsel for the Appellant**

M/s. S. Kolandasamy and Mr. C.S. Saravanan

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 2 and 3

**Appeal No. 09 of 2015(SZ)**

M/s. R.K.V. Blue Metals

Represented by its Proprietor

Mr.R.Kathirvelu

S.F.No. 503/1,506

Sithalapakkam road

Magaral village

Kanchipuram District



सत्यमेव जयते

**.....Appellant**

**Vs.**

1. The Appellate Authority

Represented by its Chairman

Gangadeeswarar Koil Street

Purasaiwalkam

Chennai- 600 084

2. Tamil Nadu Pollution Control Board

Represented by its Member secretary

No.100, Annasalai

Guindy, Chennai-600 032

3. The District Environmental Engineer

Tamil Nadu Pollution Control Board

Sriperumbudur at Padappai

No.539/3, Bazaar Street

Padappai- 601 301

**.....Respondents**

**Counsel for the Appellant**

M/s. S. Kolandasamy and Mr. C.S. Saravanan

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 2 and 3

**Appeal No. 10 of 2015(SZ)**

M/s. Literoof Housing Limited

Represented by its Proprietor

Mr.M.Mohammed Sherif

T.S.No.325/1A, 1B&1C

Siruthamur village

Uthiramerur Taluk

Kanchipuram District

**.....Appellant**

**Vs.**

1. The Appellate Authority  
Represented by its Chairman  
Gangadeeswarar Koil Street  
Purasaiwalkam  
Chennai- 600 084

2. Tamil Nadu Pollution Control Board  
Represented by its Member secretary  
No.100, Annasalai  
Guindy, Chennai-600 032

3. The District Environmental Engineer  
Tamil Nadu Pollution Control Board  
Sriperumbudur at Padappai  
No.539/3, Bazaar Street  
Padappai- 601 301

**.....Respondents**

**Counsel for the Appellant**

M/s. S. Kolandasamy and Mr. C.S. Saravanan

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 2 and 3

**Appeal No.11 of 2015**

M/s. Literoof Housing Limited

Represented by its Proprietor

Mr.M.Mohammed Sherif

T.S.No.325/1A, 1B&1C

Siruthamur village

Uthiramerur Taluk

Kanchipuram District

**.....Appellant**

**Vs.**

1. The Appellate Authority

Represented by its Chairman

Gangadeeswarar Koil Street

Purasaiwalkam

Chennai- 600 084

2. Tamil Nadu Pollution Control Board

Represented by its Member secretary

No.100, Annasalai

Guindy, Chennai-600 032

3. The District Environmental Engineer

Tamil Nadu Pollution Control Board

Sriperumbudur at Padappai

No.539/3, Bazaar Street

Padappai- 601 301

**.....Respondents**

**Counsel for the Appellant**

M/s. S. Kolandasamy and Mr. C.S. Saravanan

**Counsel for the Respondents**

Smt. H. Yasmeen Ali - Counsel for respondent No. 2 and 3

## ORDER

### QUORAM

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

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

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Delivered by Justice Dr. P. Jyothimani dated 14<sup>th</sup> January, 2016

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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. These appeals are directed against the orders of the learned Appellate Authority of the Tamil Nadu Pollution Control Board (the Board) in respect of the three of the Blue Metal units, passed under the Water (prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 in and by which the learned Appellate Authority confirmed the decision of the Board passed under the above said Acts rejecting the application of the appellants who are the stone crusher units on the ground that they are situated within 1 km radius and not complying with the citing criteria prescribed in B.P.No. 4 dated 02-07-2004.
2. While appellant in Appeal Nos. 4 and 5 who has established a crusher unit in S.F No.495/1 of Magaral village, Kanchipuram Taluk has applied to the Board for consent on 12-09-2012, the appellant in Appeal Nos. 8 and 9 has applied for consent in respect of S.F. No. 503/1 and S. F. No.506 in Sithalapakkam Road, Magaral village, Kanchipuram Taluk on 03-04-2013 under both Acts. Likewise, the appellant in appeal Nos. 10 and 11 of 2015 has applied for its existing stone crushing unit located at S.F.No. 325/1A, 1B and 324/1C, Siruthamur village, Uthiramerur Taluk, Kanchipuram District on 06-02-2013. The District

Environmental Engineer of the Board in his orders dated 21-09-2012, 17-04-2013 and 11-03-2013, respectively in respect of the three appellants has rejected the said applications on the ground that on inspection it was noticed that 10 members of stone crushing units were under operation within a distance of 1 km from the applicants units. The said orders came to be passed by the Board based on B.P. Ms. No. 4 dated 02-07-2004 which contemplates that no crushing unit should be located within 500 m from any National Highway (NH) or State Highway (SH) or primary residential area or mixed residential area or places of public or religious importance and the minimum distance between two crushing units should be 1 km to avoid dust pollution influence of one over the other.

3. Aggrieved by the said rejection orders passed by the District Environment Engineer, the appellants filed respective appeals under both the Acts before the learned Appellate Authority. The appeals were preferred on the ground that the appellants have submitted necessary certificates to the effect that they are the existing units having been approved as small scale industries with license from all statutory and other authorities and have been running for long years and that there are no NH or SH located or residential areas situated within 500 m and that the Board while passing the order of rejection has not examined as to whether the distance criteria in respect of each of the appellant is comparable to any existing crushing units which are having valid Consent to Operate and in any event, the rejection orders came to be passed merely based on an alleged spot inspection. It is also on the ground that even though in respect of some cases show cause notices were issued, the appellants were not allowed to explain to the Board as to whether the 1 km criteria stated to have been violated by the appellant is between the distance between appellants units and other units by naming them and therefore

the original orders of the Board was challenged on the ground of violation of principles of Natural Justice.

4. However, it appears as it is seen from the impugned order of the learned Appellate Authority also, that the Board has filed a report before the learned Appellate Authority giving certain particulars about 10 existing units giving certain remarks which are as follows:

Sl.No	Name	Year Commissioning	Remarks
1	Lalitha Blue Metal	1996	Existing Unit, Issued with RCO, Revocation order is under process
2	Uthayam Blue Metal	1993	Existing Unit, Applied for CTO
3	Karpaga Vinayagar Blue Metal	1999	Existing Unit Issued with CTO
4	Sankar Blue Metal	2009	Existing Unit, Application for CTO rejected, Appeal filed
5	Anna Poorani Blue Metal	-	Unit is not in operation for the past 5 years
6	Sridhar Blue Metal	-	Unit is not in operation for past 5 years
7	SPM Siva Blue Metal	2008	Existing Unit, Issued with CTE in 2008, Applied for CTC
8	R.R. Blue Metal	-	Unit not in operation
9	Raasi Blue Metal	1990	Existing Unit, Applied for CTO
10	Srinivasan Blue Metal	1989	Existing Unit, Applied for CTO

5. The report also appears to have stated that the citing criteria of distance between 2 units in accordance with B.P. Ms.No. 4 has not been complied with and Hon'ble High Court of Madras in the order dated 08-10-2010 in W.P.No. 15260 of 2006 has upheld the validity of the said Board proceedings. The appellants also appeared to have filed objection before the learned Appellate Authority against

the report stating that the appellant units have provided all adequate air pollution control measures and water sprinkling system for avoiding spread of dust particles in open air and the Board has not strictly complied with the minimum 1km distance between two crushers apart from many other objections.

6. However, the learned Appellate Authority under the impugned orders has proceeded as if the appellant units have admitted that they are established and situated within 1km from the other cluster of crushers. The learned Appellate Authority, while considering the contention raised on behalf of the Appellants that District Environment Engineer has no authority, held that under Section 15 of Air Act, 1981 and correspondent provision of Water Act, 1974 there is a provision to delegate the powers. While considering the next contention of the Appellants that the Board in its original order itself has not stated whether the unit was established within 1 km with necessary particulars, the Learned Appellate Authority has taken note of the report of the Board that out of the 10 stone crushing units, consent order in respect of 3 units namely M/s.Lalitha Blue Metals, M/s.Karpaga Vinayagar Blue Metal and M/s.SPM Siva Blue Metals have been issued and therefore the other units which have not obtained consent cannot be permitted to operate as one of the units in the cluster and relied upon the order of Hon'ble High Court upholding the validity of B.P.Ms.No. 4 dated 12-07-2004 and rejected the appeals filed by the appellants.
7. Aggrieved by the said dismissal of the statutory appeals by the learned Appellate Authority, the present appeals have been filed by the appellants on various grounds including that the report of the Board itself states that the unit is located in cluster of units within 1 km radius and all crushing units are operating without valid Consent to Operate from the Board and this admission goes to the root of the matter and the Board ought to have explained as to why the 3 units of the

appellants alone have been picked up for rejection. According to the appellants, as per the report of the Board the said 3 units have been given only Consent to Establish and not Consent to Operate and the Board has not chosen to provide the adequate details and failed to disclose even the dates. The appellants have also raised the point that even the exact distance between the units has not been stated by the Board. The appellants have also raised a ground that learned Appellate Authority has not considered that while passing the original order of rejection, the Board has not given any opportunity of being heard.

8. The further grounds raised by the appellants are that the 1 km distance criteria is not applicable since the Board in the rejection order nowhere stated as to whether any new stone crusher is established within 1km of the appellant's unit. With the above stated grounds these appeals are filed before this Tribunal challenging the order of the learned Appellate Authority in upholding the earlier rejection order of consent by the Board.
9. Mr. K. V. Subramaniam, learned Senior Counsel appearing for some of the Appellants as well as Mr. S. Kolandasamy appearing for other appellants have vehemently raised their contention in respect of an issue pertaining to the violation of Principles of Natural Justice. According to the learned Counsel, the Board while considering the application for consent, in passing a statutory order ought to have considered that mere issuance of show cause notice is not sufficient and in cases where an order of rejection is to be passed, a proper hearing should have been given to the project proponent and in the absence of such opportunity, the original orders are liable to be set aside on the ground of violation of Principle of Natural Justice. According to them, even though the orders of learned Appellate Authority are in violation of Principles of Natural Justice in the sense that it relies upon a report filed by the Board before the Appellate Authority wherein the

Board has stated in respect of 10 units no one of them was having valid consent except 3 units. According to the learned Counsel, the learned Appellate Authority which is disposing statutory appeals ought to have directed the Board to give details in respect of the distance and presuming that the appellant units are situated within 1km is clearly on wrong premise and transgression of its quasi judicial authority. The learned Counsel have submitted that as per the established judicial precedent, the learned Appellate Authority should not have come to such a conclusion.

10. On the other hand, it is the contention of the learned Counsel appearing for the Board, Mrs.Yasmeen Ali that while the legality of B.P.Ms. No. 4 dated 02-07-2004 has been upheld by the Hon'ble High Court which has also been followed by this Tribunal in Appeal Nos. 22 and 23 of 2014 dated 15<sup>th</sup> October 2014, in the absence of valid consent in favour of the appellants it is not open to them to raise the question relating to distance criteria and even the Principles of Natural Justice cannot to be allowed to be raised by the appellant units.

11. We have heard the learned Counsel appearing for the appellants including the Senior Counsel Mr. K.V. Subramaniam and respondents extensively, considered all documents including the impugned order of learned Appellate Authority as well as the rejection orders of the Board and given our anxious thought to the issue involved in the appeal.

In these appeals the main issue to be decided is as to

“Whether the impugned order of learned Appellate Authority as well as the original rejection orders of the Board are valid and in conformity with the Principles of Natural Justice?”

12. Section 21(1) of the Air Act, 1981 makes it clear that any person to establish industrial plant in an air pollution control area has to obtain prior consent of the

Board. Section 19 of the said Act enables the State Government after consultation with State Board to notify in the official Gazette declaring any area within the State as air pollution control area. On receipt of an application from the project proponent under Section 21 (1) accompanying the fees, the Board is entitled to make any inquiry in respect of the application and in making such inquiry it shall follow such procedure as may be prescribed and within 3 months after receipt of application the Board shall pass order either to grant consent or refuse such consent with reasons to be recorded.

13. Likewise, Section 25 of the Water Act, 1974 for any person

(i) To establish or take any step to establish any Industrial operation or process or any treatment and disposal of system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or

(ii) Bring into use any new or altered outlet for the discharge of swage or

(iii) begin to make any new discharge of sewage distance he shall obtain prior consent from the Board. Likewise in the case of Air Act, 1981, Section. 25 (3) and 4 enables the State Board to make such inquiry and grant consent or refuse to grant consent in which event reasons are to be recorded.

14. By virtue of the above said provisions under the Air and water Acts it is clear that the compliance of the Principles of Natural Justices is complete when once the State Board conducts inquiry as deemed fit and pass orders with reasons in case of rejection.

15. Both the Acts provide statutory appeals to the learned Appellate Authority against the orders of the State Board under Section 31 and 28, respectively. Section 28(4) of the Water Act, 1974 enables the Appellate Authority on receipt of an appeal to

dispose of the same as expeditiously as possible after giving an opportunity of being heard to the appellant. Likewise, Section 31 of Air Act, 1981 enables the Appellate Authority to dispose of the appeal as expeditiously as possible after giving opportunity of being heard. In addition to the above, under Water Act the Appellate Authority is entitled to determine any condition imposed including the variation of such condition. Sec 28(5) of is as follows;

*“28(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,--*

*(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;*

*(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable”.*

16. The above said provisions make it clear that the Appellate Authority is performing a quasi judicial function. Law is well settled that whether an executive authority or an authority performing quasi judicial function, conformity of the principle of Natural Justice in their proceedings are inherent even if such powers are not expressly vested. It is only the nature of compliance of principles of Natural Justice by which the two authorities differ. As stated above, the confirmation of principles of Natural Justice in so far as it relates to the Board as specifically included in the statute completes when an inquiry conducted and reason given for rejection but in so far as it relates to the Appellate Authority the principles of Natural Justice contemplate the full opportunity to be given before an application or appeal is rejected. In addition to that the Appellate Authority is certainly entitled to go into the correctness of the original order by a proper analysis of the entire factual aspects.

17. By applying the above said principle to the facts of the present case we are of the considered view that the learned Appellate Authority has not given the analysis of the correctness or otherwise of the original orders. Even otherwise, we have no hesitation to come to a conclusion that the orders of the learned Appellate Authority cannot stand scrutiny of the true test of law in the sense that even it has not decided about the factual circumstance of exact distance between the crusher units, by making the Board to produce the particulars. Therefore, it is clear that what was missing in the earlier order namely distance between the crusher units has been continued in the orders of the learned Appellate Authority as well.

18. At the same time, we are not expressing any opinion on the correctness of the orders passed by the Board dated 21-09-2012, 17-04-2013 and 11-03-2013, respectively relating to the validity of the Board proceedings dated 02.07.2004 as the Hon'ble High Court has already given its verdict on the same which has also been followed by this Tribunal in our order dated 15<sup>th</sup> October 2014. We are also not deciding anything on the rights of the appellants before us to carry on the crusher activity in the absence of the Consent to Operate issued by the Board in their favour. We restrict ourselves only in respect of validity of the orders passed by the Appellate Authority and while considering the same inevitably we have to consider the correctness of the original orders passed by the Board. We would in normal circumstance have remitted the matter before the Appellate Authority due to the above stated reason. But we are of the considered view that by remitting so no useful purpose would be served as we have given our finding that the original orders passed by the Board itself are not in accordance with law. In such view of the matter, remitting the matter to the learned Appellate Authority will be only a time consuming process which may not be congenial in the interest of environmental protection. We are of the view that to meet the ends of justice, both

the orders of Appellate Authority as well as rejection orders of the Board are to be set aside and the matter remitted back to the Board to consider the application for consent by giving proper reasons and opportunity if necessary, to the parties and pass appropriate orders. Accordingly, the appeals stand allowed and impugned orders of the learned Appellate Authority passed in appeal No.23 and 24 of 2013 Appeal No. 26 and 27 of 2013 and appeal No. 21 and 22 of 2013 dated 10-01-2014, 23-01-2015 and 23-01-2015, respectively stand set aside for the reasons stated above and the original orders of the Board rejecting the application for consent of appellants under the Water Act, 1974 and Air Act, 1981 dated 21-09-2012, 17-04-2013 and 11-03-2013 also stand set aside and the matter is remitted back to the Board to consider the applications of the appellants dated 12-09-2012, 03-04-2013 and 06-02-2013, respectively and pass orders expeditiously in accordance with law and if necessary after giving opportunity to the appellant and such order shall be passed within a period of 4 weeks from the date of receipt of the order. The appeals stand allowed. There shall be no order as to cost.

Dated 14<sup>th</sup> January 2016

Chennai.

Justice Dr. P. Jyothimani  
Judicial Member

Prof. Dr. R. Nagendran  
Expert Member

NGT