

Madras High Court

Vellore District Environment vs The Honourable The Chief Justice ... on 28 January, 2010

DATED: 28.1.2010

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO

AND

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR

Writ Petitions No.8335 of 2008

and 19017 of 2009

W.P.No.8335 of 2008

Vellore District Environment

Monitoring Committee,

rep.by its Secretary

Mr.R.Rajendran,

1/50, Chinnavarikkam (via)

Thuthipet,

Ambur-635811 ... Petitioner

Vs.

1.The District Collector,

Vellore District,

Vellore.

2.The Tamil Nadu Pollution Control Board,

rep.by its Member Secretary,

100, Anna Salai,

Chennai.

3.Loss of Ecology (Prevention & Payment
of Compensation) Authority,

rep.by its Member Secretary,

New No.298, Peters Road,

Royapettah, Chennai-600086.

4.The All India Skin and Hide Tanners

and Merchants Association,

rep.by its Joint Secretary,

Leather Centre,

No.53, Rajaiah Muthiah Road,

Periamet, Chennai-3.

5.The Chief Secretary to

the Government of Tamil Nadu,

Fort St.George,

Chennai-600009.

(R.5 impleaded as per Suomotu order

dated 30.10.2008 in W.P.No.89335/2008 by

The Honourable The Chief Justice and

The Honourable Mr.Justice P.Jyothimani) ... Respondents

W.P.No.19017 of 2009

The All India Skin and Hide Tanners and

Merchants Association, a Society

registered under the Tamil Nadu Societies

Registration Act, 'Leather Centre',

No.53, Raja Muthaiah Road,

Periamet, Chennai-600003.

Rep.by its Joint Secretary M.Faiyaz Ahamed ... Petitioner

Vs.

1.The Loss of Ecology

(Prevention and Payment of Compensation)

Authority,

No.198, Peters Road,

Royapet, Chennai-600086,

rep.by its Member Secretary

2.The Tamil Nadu Pollution Control Board,

No.100, Anna Salai, Chennai-600002,

represented by the Member Secretary

3.The Vellore District Environment Monitoring

Committee, No.1/50, Chinna Varikkam,

Ambur-635811,

represented by its Secretary ... Respondents

* * *

Writ Petitions filed under Article 226 of the Constitution of India.

W.P.No.8335 of 2008 has been filed as a Public Interest Litigation, praying to issue a Writ of Mandamus, directing the respondents to ensure that the compensation payable to all affected individuals/families as contained in the report in Award dated 7.3.2001 of the Loss of Ecology (Prevention and Payment of Compensation) Authority for the State of Tamil Nadu is paid and all industries in default being subject orders of closure and initiative proceedings under the Revenue Recovery Act, 1890 for recovery of compensation and that compensation be assessed for the further loss to individual/families from 31.12.1998 till date and implementation of appropriate scheme for reversal of damage to ecology and infrastructure be effected within a reasonable time frame and to ensure that there are no discharges from any tanneries in and around Ambur and Vaniyambadi land/water body.

W.P.No.19017 of 2009 has been filed praying to issue a Writ of Certiorari to call for the records relating to the order passed by the 1st respondent dated 5.5.2009 with regard to the assessment of damage to ecology in Vellore District beyond 1998 and quash the same.

* * *

For petitioner in

W.P.No.8335/08 & for

R.3 in W.P.19017/09 : Mr.T.Mohan

For petitioner in

W.P.No.19017/09 : Mr.G.Rajagopalan, S.C. for

and for R.4 in M/s.G.R.Associates

W.P.No.8335/08 :

For R.1 & R.5

in W.P.8335/08 : Mr.G.Desingu, Spl.G.P.

For R.2 in

both the W.Ps. : Mr.R.Ramanlaal

For R.3 in

W.P.8335/08 & for

R.1 in W.P.19017/09 : Mr.N.Sankaravadivel

* * *

COMMON ORDER

ELIPE DHARMARAO, J.

Since both these writ petitions are inextricably interconnected with each other, arguments were heard in common and are being disposed of by this common order.

2. Before deciding the above two cases, a brief history which paved way for the filing of these two cases needs to be narrated, for better appreciation of the facts of the cases on hand.

3. Aggrieved at the manner in which the tanneries in the state of Tamilnadu are posing threat to the ecosystem and alleging that enormous discharge of untreated effluents into the river Palar is resulting in non-availability of potable water in the area, a Public Interest Litigation under Article 32 of the Constitution of India was filed before the Honourable Supreme Court in W.P.(C) No.914 of 1991 by Vellore Citizens Welfare Forum, praying to issue a Writ of Mandamus, directing the respondents therein viz. Union of India and the State of Tamil Nadu, to immediately pay adequate compensation to victims of pollution and to those who lost their lives, food crops, vegetation, trees, agricultural land, wells and suffered severe hardship due to irresponsible and negligent act of polluting tanneries, the amount to be paid in compensation to the affected people be recovered from the polluting tanneries and the Honourable Apex Court in its landmark judgment in VELLORE CITIZENS WELFARE FORUM vs. UNION OF INDIA AND OTHERS [AIR 1996 SC 2715], dated 28.8.1996, in Para No.24, has issued the following directions: "1. The Central Government shall constitute an authority under S.3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired judge of the High Court and it may have other members preferably with expertise in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under S.5 of the Environment Act and for taking measures with respect to the matters referred to in Cls.(v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of S.3. The

Central Government shall constitute the authority before September 30,1996.

2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refused to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rupees 10,000/- each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

7. The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

9. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the

Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

10. The Government order No.213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure-I to the Notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries.

11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board."

5. In Para No.25 of the said judgment, the Honourable Apex Court has further observed as follows:

"We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mentioned that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Art.226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary."

6. From the materials placed on record, it is seen that the said Writ Petition was transferred to the file of this Court from the Honourable Supreme Court and re-numbered as W.P.No.13433 of 1996 and pursuant to the directions issued in the above said writ petition, the Loss of Ecology (Prevention and Payment of Compensation) Authority has been constituted by the Government of India, vide its Notification in S.O.671 (E), dated 30.9.1996 with The Honourable Mr.Justice P.Bhaskaran, a retired Judge of this Court, as the Chairperson and the said Authority started functioning from 23.9.1998. The following powers and functions were conferred on the said Authority:

"(i) exercise of powers under Section 5 of the said Act (Environment (Protection) Act, 1986), for issuing directions and for taking measures with respect to matters referred to in Clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of Sub-section 2 of Section 3 of the said Act; (ii)to assess the loss to the ecology and environment in the affected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families; (iii)to determine the compensation to be recovered from the polluters as cost of reversing the damaged environment;

(iv)to lay down the procedure for actions to be taken under (i) to (iii) above;

(v)to compute the compensation under two heads, namely, for reversing the ecology and for payment to individuals;

(vi)to direct the closure of any industry or class of industries owned or managed by a polluter in case of evasion or refusal to pay the compensation awarded against the polluter. This shall be in addition to the recovery from the polluter as arrears of land revenue; (vii)to frame scheme or schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu in consultation with expert bodies like National Environmental Engineering Research Institute, Central Pollution Control Board,

etc. These schemes shall be executed by the State Government of Tamil Nadu under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government; (viii) to review the cases of all the industries which are already operating in the prohibited area and direct the relocation of any of such industries; (ix) to close the tanneries permanently or direct their relocation, which have not provided adequate treatment facilities and not having valid certificate from the TNPCB; (x) to comply with the orders issued by the Madras High Court and the Supreme Court from time to time;

(xi) to deal with any other relevant environment issues pertaining to the State of Tamil Nadu, including those which may be referred to it by the Central Government in the Ministry of Environment and Forests."

7. By the Award dated 7.3.2001, the said Authority identified 29,193 individuals/families as affected and the compensation was assessed at Rs.26,82,02,328/= for the period 12.8.1991 to 31.12.1998 in respect of 15,164.96 hectares in 186 villages in 7 Taluks of the District of the District and in the said Award, the Authority has made it clear that the liability of the polluting industries to compensate affected individuals continues beyond 31.12.1998 till the damage caused to the ecology and environment by pollution is reversed.

8. This Award, particularly with reference to apportionment of the compensation was questioned by some of the aggrieved parties in W.P.No.512 of 2002 and the very validity of the Notification dated 13.9.1996, appointing the said Authority, was questioned by the All India Skin and Hide Tanners and Merchants Association, (hereinafter referred to as 'AISHTMA') (the petitioner in W.P.No.19017 of 2009 herein) by filing W.P.No.7015 of 2000 and a Division Bench of this Court has disposed of this writ petition by the order dated 22.3.2002. Though, at the initial stage, challenge was made to the appointment of the above said Authority and the quantum, at a later point of time, all the counsel appearing for the petitioners therein submitted that they are not contesting the quantum fixed by the authority, but have prayed to grant them the facility to pay the amount in instalments. The order of the Division Bench of this Court dated 22.3.2002 is extracted hereunder, for the sake of better understanding: "This matter relates to the polluters-paying the liability. Pursuant to the enquiries made by the authority, which has been constituted consequent to the judgment rendered by the Supreme Court in Vellore Citizens' Welfare Forum Vs. Union of India (1996) 5 SCC 647, amounts have been determined, and this writ petition has been filed by the Association consisting of 334 tanners. Now, all the learned Senior Counsel appearing for the petitioner submit that they are not contesting the quantum fixed by the authority, but because of the financial strain, the entire amount cannot be deposited in lump sum. Facility to pay in installments is, therefore, pleaded. The number of tanneries as stated above are 334, of which 151 tanneries are smaller ones. Likewise, there are other two categories also. Having regard to the plea made to facilitate the payment in installments and having regard to the facts and circumstances and also taking the welfare of the affected parties into consideration, as the challenge now ends, because of the acceptance of the persons manning tanneries to pay the amount as determined by the authority, the installments are fixed as follows: Tanners (151 in number) who are ordered to pay up to Rs.2 lakhs, have to pay the amount in a bi-monthly installments of Rs.21,22,672/= each. For the category, whose liability is between Rs.2 lakhs and Rs.20 lakhs (159 in number), the amount shall be payable in 12 bi-monthly installments of Rs.88,35,675/- each. The third category (24 in number), whose liability is over and above Rs.20 lakhs shall pay the amount in 18 bi-monthly installments of Rs.96,37,863/- each. The above schedule is effective from 1st April, 2002 and the first of such payment shall be made on or before 10th April 2002, and every bi-monthly installment shall be made after two months thereof, for instance, on or before 10th June 2002, and so on. It is made clear that in default of payment of even one bi-monthly installment, the Collector shall be entitled to realize the balance amount in lump sum from the concerned defaulters. It is needless to mention that this arrangement facilitating the payment in installments is in modification of the earlier order passed on 22.1.2002. The writ petition is disposed of accordingly. Consequently, the connected miscellaneous petitions are closed."

9. In these circumstances, complaining that no scheme has been implemented till today for reversal of the damage caused to the ecology and environment and no compensation has been paid for the period from

31.12.1998 till date, the Vellore District Environment Monitoring Committee has filed a probono publico in W.P.No.8335 of 2008, praying to issue a Writ of Mandamus, directing the respondents to ensure that the compensation payable to all affected individuals/families as contained in the report in Award dated 7.3.2001 of the Loss of Ecology (Prevention and Payment of Compensation) Authority for the State of Tamil Nadu is paid and all industries in default being subject orders of closure and initiative proceedings under the Revenue Recovery Act, 1890 for recovery of compensation and that compensation be assessed for the further loss to individual/families from 31.12.1998 till date and implementation of appropriate scheme for reversal of damage to ecology and infrastructure be effected within a reasonable time frame and to ensure that there are no discharges from any tanneries in and around Ambur and Vaniyambadi land/water body.

10. Along with the said writ petition, a Miscellaneous Petition in M.P.No.1 of 2008 was also filed praying to direct the 3rd respondent/Authority to close down all industries which have not complied with the report and Award dated 7.3.2001, pending disposal of the writ petition.

11. The First Bench of this Court, by the order dated 10.4.2008 has issued the following directions:

"(i) The third respondent (Authority) shall make enquiries as to whether the polluters have complied with the condition after 1999 as per the award and fix the compensation payable within four months. (ii)The third respondent shall assess the damage caused to the ecology since 1999.

(iii)The third respondent shall frame a scheme for reversal of the damage to ecology within eight weeks and issue the same to the District Collector, who is directed to implement the scheme. (iv)The District Collector shall recover the compensation as assessed by the earlier order from the polluters and pay the same to the affected parties and shall file a status report into this Court. The District Collector shall also strictly and expeditiously comply with the scheme framed and the directions of the third respondent."

12. Thereupon, the fourth respondent therein viz. AISHTMA/the petitioner in W.P.No.19017 of 2009 herein has filed a petition in M.P.No.2 of 2008 to vacate the said interim order and the First Bench of this Court, by the order dated 13.10.2008, has made it clear that the third respondent should hear the fourth respondent (AISHTMA/the petitioner in W.P.No.19017 of 2009) before making the exercise, as directed in the order dated 10.4.2008, extracted supra and the fourth respondent (AISHTMA) is at liberty to raise all his contentions, including the contention that it is not entitled to pay anything by way of damages, inasmuch as it has taken adequate measures to control the pollution.

13. Pursuant to this, the third respondent has passed an order dated 5.5.2009, rejecting all the contentions urged on the part of the AISHTMA/ fourth respondent therein. Aggrieved by the same, the fourth respondent in W.P.No.8335 of 2008 viz. AISHTMA has come forward to file W.P.No.19017 of 2009, praying to quash the order dated 5.5.2009 passed by the Loss of Ecology (Prevention and Payment of Compensation) Authority, Chennai, with regard to the assessment of damage to ecology in Vellore District beyond 1998.

14. On a thorough perusal of the entire materials placed on record, we are able to see that even the third respondent/Authority in its order dated 5.5.2009, impugned in W.P.No.19017 of 2009, at page No.8, while referring to the contention of the AISHTMA (the petitioner in W.P.No.19017 of 2009) that they have put up individual effluent treatment plants and common effluent treatment plants and spent crores of rupees to employ pollution control measures at the suggestion of NEERI and CLRI, has admitted that the industries have taken some pollution control measures, but, however, the standard upper limit of pollution in the treated effluent of 2100mg/l of TDS content has not been kept up and the same is the level of pollution in wells and other irrigating sources in the areas. But, the strong contention of the AISHTMA that the Scheme framed by the Authority to control the pollution and to reverse the damage ecology has not been implemented, though the industries have contributed a portion of the amount as per the Award, has not been denied by anybody. It is also seen from the materials placed on record that the Scheme for reversal of damage to the ecology was framed by the Loss of Ecology (Prevention and Payment of Compensation) Authority in the year 2001 and

there is complete slackness on the part of the Government in implementing the said Scheme, even though the industry had deposited a sum of Rs.5 crores towards the contribution for reversal of ecology under the name of 'Environment Protection Fund', which was created pursuant to the directions of the Honourable Supreme Court in the Vellore Citizens' case.

15. The judgment of the Honourable Supreme Court in Vellore Citizens' case is quite clear and at ParaNo.24(3) of the said judgment, the Honourable Apex Court has fastened the liability to disburse the compensation amount awarded by the Authority to the affected persons/families on the District Collector/District Magistrate, once the compensation amount is paid by the polluters. Though as per Para No.24(4) of the said judgment, the Authority is entitled to direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him, the same has no application to the cases on hand, since, as has already been observed by us supra, the polluters have complied with the directions of the Supreme Court by paying the compensation amount and the same is lying as "Environment Protection Fund'. Even though the said Fund is lying with the State Government and even after the passing of the Award by the Authority as early as in the year 2001, the compensation amounts have not been disbursed to the affected persons by the District Collector, for which we cannot find fault with AISHTMA.

16. In this uncontroverted factual backdrop, if we assess the case in W.P.No.8335 of 2008 filed as probono publico, except repeatedly urging that many number of affected persons have not received the compensation amount yet, the petitioner has not taken any pains or interest to gather the details of the ryots, who have received either only a part of the compensation amount or not at all received any compensation amount. Under the guise of the probono publico, the learned counsel appearing for the petitioner in W.P.No.8335 of 2008 has attempted to claim immunity, as if no details or particulars are necessary while filing a probono publico, which cannot be appreciated since it is the well established principle of law that the petitioner has to fall or stand on his own legs and cannot attempt to substantiate his case from the case of the other side. This W.P.No.8335 of 2008 has been filed by the petitioner under the garb of probono publico with no particulars or details necessary to decide matter. Mere allegation, however strong it may be, without any material to substantiate the same, cannot take the place of proof. Thus, this probono publico has been filed with no appreciable grounds, but only to waste the public time of not only this Court, but also that of the official respondents, which practice should not be encouraged.

17. Further more, from the materials placed on record, we are also able to see that Reverse Osmosis plants have been established in most of the Units and in rest of the Units steps are being taken to establish them under the supervision of the State Pollution Control Board, and therefore, we are not in a position to affix our seal of approval to the contention of the petitioner in W.P.No.8335 of 2009 that no step has been taken on the part of the Units to prevent pollution.

18. In view of the above stated reasons, we do not find any reason to entertain W.P.No.8335 of 2008 and therefore, the same is liable only to be dismissed. Accordingly, W.P.No.8335 of 2008 is dismissed and the consequential proceedings initiated and the order dated 5.5.2009 passed by the third respondent therein viz. the Loss of Ecology (Prevention & Payment of Compensation) Authority, pursuant to the directions in the said writ petition, also stand quashed. In view of the dismissal of W.P.No.8335 of 2008, we do not propose to go into various other aspects argued on either side in respect of the other writ petition in W.P.No.19017 of 2009, since by the dismissal of W.P.No.8335 of 2008, the impugned order in W.P.No.19017 of 2009 is already held to be invalid. With this observation, W.P.No.19017 of 2009 stands disposed of. Connected Miscellaneous petitions are closed. No costs.

Rao

To

1.The District Collector,

Vellore District,

Vellore.

2.The Member Secretary,

Tamil Nadu Pollution Control Board,

100, Anna Salai,

Chennai.

3.The Member Secretary,

Loss of Ecology (Prevention & Payment
of Compensation) Authority,

New No.298, Peters Road,

Royapettah, Chennai-600086.

5.The Chief Secretary to

the Government of Tamil Nadu,

Fort St.George,

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