

Madras High Court

S.N.K.Ravi vs The Chemplast Sanmar Limited on 10 November, 2009

Dated : 10.11.2009

Coram :

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA

and

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

Writ Petition No.7795 of 2009

S.N.K.Ravi Petitioner

v.

1. The Chemplast Sanmar Limited,

represented by its Chairman,

9 Cathedral Road, Chennai 86.

2. The Chemplast Sanmar Limited,

SIPCOT Industrial Complex,

Phase 11, Seemankuppam,

Thyagavalli village, Cuddalore.

3. The Tamilnadu Pollution Control Board,

represented by its Chairman,

76, Mount Salai, Guindy, Chennai 600 032.

4. The District Environmental Engineer,

rep. by its District Engineer,

The Tamilnadu Pollution Control Board,

59, Seetharam Nagar, Cuddalore 607 001.

5. Tharmaraikannan,

Chairman, Panchayat Union,

Karaikadu village, Cuddalore District,

Cuddalore.

6. Anbazhagan, President,

Periakaraikadu Panchayat,

Karakadu village, Cuddalore.

7. S.Prabhakaran Respondents

(R7 impleaded as per order dated

07.10.2009 in MP No.2 of 2009)

Writ petition filed under Article 226 of the Constitution of India for the issue of writ of mandamus directing respondents 3 and 4 to conduct an elaborate enquiry with regard to installation and erection of the second respondent PVC Industry, Cuddalore, SIPCOT complex, Phase II, Semmankuppam, Thyagavalli village, Cuddalore and take action thereupon.

For Petitioner : Mr. P.Vasanthakumar

For Respondents 1 & 2 : Mr.Vijayanarayanan,

Senior Counsel, for

Mr.P.Vasudevan

For Respondents 3 & 4: Mr.R.Ramanlal,

Standing Counsel for TNPCB

For Respondent 7 : Mr.T.R.Rajagopalan,

Senior Counsel, for

Mr.D.Ravichandran

ORDER

(Order of the Court was made by

S.J.MUKHOPADHAYA, J.)

The writ petition has been preferred by the petitioner in public interest for a direction directing respondents 3 and 4 to conduct an elaborate enquiry with regard to installation and erection of the second respondent PVC Industry, Cuddalore, SIPCOT complex, Phase II, Semmankuppam, Thyagavalli village, Cuddalore and take action thereupon.

2. The petitioner is a journalist of a newspaper. It was submitted that PVC (Poly Vinyl Chloride) is a world wide poison plastic and it is associated with the release of environmental poisons including persistent organic pollutants, which cause a wide range of human health hazards including cancer, immune system and reproductive system damage. The PVC plant will emit fugitive emissions from pumps, compressors, pressure

releasing devices, valves, etc., and also it is not possible to monitor the leaks of fugitive emissions from various sources without leak protection system. The company, if allowed to function, will discharge million litres of treated effluent per day containing 1 mg/litre Vinyl Chloride Monomer (VCM) and hence the treated effluent will release 82.5 gms of additional load per hour and the employees and public living around the plant will be affected due to inadequate monitoring devices at ground level emission. The effluent containing Vinyl Chloride Monomer (VCM) induces damages to nervous system, immuno system, liver thyroid, eyes and skins besides causing necrosis. It is also responsible for reynolds phenomenon which will erode bones, finger tips, nails and blood circulation.

3. According to the petitioner, the Ministry for Environment and Forests (MoEF) also has given clearance for Rs.400.00 crore PVC plant to set up by the Chemplast-Sanmar group at Cuddalore and the third respondent also gave consent to establish the Chemplast Sanmar Group in Cuddalore.

4. There are nearly 8 villages around the SIPCOT chemical industrial estate and their primary livelihood are crops like paddy, sugarcane, groundnut, gingely, coconut, millets, pulses, like red, green and blue gram and fruits like banana, cashew, mango and jack-fruits. Moreover, fishing is the main source of income of the people living there. The petitioner further submitted that the fishermen fishing early in the morning in the river Uppanar find red effluent near Kudikadu village even today. Moreover, the local fishermen who entered the water at about 3 am, suffered from severe itching on the skin after coming into contact with the water. This prompted them to come back at a later hour to check the reasons for such skin reactions. When the fishermen came to the same site at about 6 am, they saw a red sludge like layer floating on the water. No smell was reported from the effluent. The SIPCOT chemical industrial estate is notorious for its pollution. More than 19 chemical companies in the area spew poisons into the air all day long. Nestled among these industries are hapless villages that are trapped in what can only be described as gas chambers. Pollutant levels, including of carcinogens such as ethylene dichloride and vinyl chloride, are known to shoot up several tens of thousands of times above safe levels. Giving further details, the petitioner has prayed for a direction to respondents 3 and 4 to conduct an elaborate enquiry with regard to installation and erection of the second respondent PVC Industry, Cuddalore, SIPCOT complex, Phase II, Semmankuppam, Thyagavalli village, Cuddalore.

5. This Court, having noticed that the industry may emit any gas, which may increase pollution levels including carcinogens and other type of pollution emissions affecting the public in general, direction was issued to the Tamil Nadu Pollution Control Board to submit a report, by order dated 15.09.2009. The second respondent and the Tamilnadu Pollution Control Board raised the question of maintainability of the writ petition. On 07.10.2009 it was brought to the notice of the Court that the permission granted with the consent granted by PCB for establishment of the industry in question was earlier challenged before this Court in W.P. No.21791 of 2008 by one Nizamudeen by way of public interest litigation. A Division Bench of this Court, by a detailed judgment, which is reported in 2008 (6) CTC 1, having noticed the relevant facts, held as follows :
“Thus consideration of the above materials discloses that a detailed exercise was carried out by the first respondent in preparing and placing the project report before the fifth respondent for its clearance under the provisions of the Environment Protection Act, 1986 and that the officials of the 5th respondent which included High Level Body called Expert Committee for Environment Impact Assessment and Infrastructure Development and Miscellaneous Project held a meticulous analysis before granting the clearance to the project in the proceedings dated 28.11.2005, for the PVC plant and 19.12.2005, for the erection and laying of pipeline project. The 5th respondent also placed before us the minutes of the 35th meeting of the Reconstituted Expert Committee for Infrastructural Development and Miscellaneous Projects held on 29.11.2005, which discloses the consideration of the first respondent's project in paragraph 3.8. A reading of the said minutes discloses that the High Level Committee was conscious of the fact that the length of the onshore pipeline to an extent of 2500 mts, which will get terminated at the storage tank which is to be located inside the plant premises which is 2.5 km away from the sea. The Committee made note of the fact that the installation of the offshore and coastal regulation zone area would be to an extent of 2500 mts of which 500 mts would be onshore. In page 15 of the said minutes, the Committee has noted the demarcation made by the National Institute of Oceanography, one of the authorised agencies and the No Objection Certificate granted

by the 4th respondent which was approved by the State Coastal Zone Management Authority and Environment Department. The Committee recommended for the clearance of the project subject to the following conditions :- i. All conditions stipulated by the Tamil Nadu State Environment Department should be strictly implemented. ii. The details pertaining to the sludge disposal obtained from the desalination plant may be provided.

iii. Details pertaining to the model studies carried out for discharge of the brins from the desalination plant including the time taken for mixing may be provided. iv. The chemical characteristics of the sediments taken in the Marine and Coastal Regulation Zone area may be provided. v. The project authority may increase the depth of laying of underground and submarine pipelines taking into account the relevant international codes and practices. vi. Point wise clarifications/action plan on the issues raised in the public hearing (for the main project).

26. Therefore, we are convinced that every strenuous effort has been taken by the respondents 2 to 5 while considering the first respondent's application for environment clearance and after taking note of the nature of the project to be implemented in the Coastal Regulation Zone area and after being satisfied about the manner in which the project is to be implemented, thought it fit to grant its clearance by imposing very many restrictions in the interest of the public at large. Such a step taken by the 5th respondent while granting the clearance in the proceedings dated 19.12.2005, cannot be interfered with just for mere asking of the petitioner by setting aside the impugned order of the third respondent dated 27.02.2008, which is nothing but a simple permission granted by the PWD of the State Government for laying the pipeline underneath the Uppanar river which is part of the project of the first respondent which has got the necessary statutory sanction under the provisions of the Environment Protection Act, 1986."

6. The aforesaid judgment has been challenged before the Supreme Court by a petition for special leave to appeal (Civil) No.7101 of 2009. In view of the pendency of the special leave petition before the Supreme Court, the Tamil Nadu Pollution Control Board issued a consent order dated 14.07.2009 subject to final decision of the Supreme Court in the said case. Taking into consideration the aforesaid fact, on 07.10.2009 this Court observed and made it clear that the question whether the industry was rightly permitted to be established in the area or not will not be decided in the present case, as the matter is pending consideration before the Supreme Court and another matter is pending appeal before the appellate forum. On 27.07.2009, this Court, while making it clear that it will not decide the question of legality and propriety of the order by which the first respondent was established, as the same was earlier disposed of and now pending before the Supreme Court, the respondent Pollution Control Board was directed to inspect the premises of the respondent company and to report whether the industry in question is causing any air pollution. Pursuant to the Court's order, a report was submitted by the Tamilnadu Pollution Control Board, which was noticed by this Court on dated 22.10.2009, when the following order was passed : "Pursuant to the Court's order, a report has been submitted by the Tamil Nadu Pollution Control Board. From the said report, it appears that the experts of the Pollution Control Board monitored the pollutants, such as Suspended Particulate Matter (SPM), Sulphur Dioxide (SO₂) and Nitrogen and its Oxides (Nox) and stated that they are below the pollution level. But, no report has been submitted in regard to Carbon Monoxide (CO), Lead (Pb) and Respirable Particulate Matter (RPM). It will be evident from the conditional order of establishment granted by the Pollution Control Board that the first respondent was asked not to exceed the figures of pollutant level as shown therein. In the circumstances, we direct the Pollution Control Board to make a spot verification of the industry and in and around that area, to find out the level of Carbon Monoxide, Lead and Respirable Particulate Matter. It will be open to the Pollution Control Board to engage an expert by way of outsourcing and the cost will be borne by the first respondent."

7. In view of the said order an additional report has been filed by respondents 3 and 4 annexing a statement showing the ambient air quality (AAQ) survey report therewith which is as under : sl.

No

Pollutant Concentration (Micro gram/m³) (ug/m³)

Standards (ug/m³) (Micro gram/
m³)

On top of the scaffolding near Boiler House

On top of the scaffolding near Coal Yard

Station

On top of the Vaithialingam house

Points

On top of the scaffolding near fire hydrant tank

On top of the scaffolding near administrative office

On top of the scaffolding near Chemplast Medical Centre

Remarks

1

RSPM

(24 hrs average)

150 micro gram/ m³

94

128

87

113

91

108

All the station point valves are within the prescribed limit

2

Lead (24 hrs average)

1.5 micro gram/ m³)

0.042

0.042

0.054

0.052

0.073

0.098

All the station points valves are within the prescribed limit

3

CO (1 hour average)

10000 micro gram/ m3

344

344

241

504

458

573

All the station points valves are within the prescribed limit

8. Learned counsel appearing on behalf of the petitioner submitted that a further enquiry has to be made with regard to the establishment and erection of the second respondent PVC Industry at Cuddalore. Referring to the minutes of Public Hearing Committee Meeting held on 02.06.2002, it was submitted that this PVC industry is causing health hazard, as pointed out by different organisations including NGOs and Members and noticed in the said meeting.

9. A detailed elaborate argument was advanced by the counsel for the petitioner and the counsel also relied on some of the decisions of the Supreme Court. This Court is not inclined to give any finding at this stage for the following reasons : The order granting consent to establish the second respondent PVC industry at Cuddalore, by PCB on 27.02.2008 fell for consideration in writ petition No.21791 of 2008, which judgment is now reported in 2008 (6) CTC 1, as noticed earlier. In that case, this Court having considered all the materials on record, observed that a detailed exercise was carried out by the first respondent (Chemplast Sanmar Ltd) in preparing and placing the project report before the fifth respondent (Union of India) for its clearance under the provisions of the Environment Protection Act, 1986 and that the officials of the 5th respondent which included High Level Body called Expert Committee for Environment Impact Assessment and Infrastructure Development and Miscellaneous Project held a meticulous analysis before granting the clearance to the project in the proceedings dated 28.11.2005, for the PVC plant and 19.12.2005, for the erection and laying of pipeline project. This Court after being convinced that every strenuous effort has been taken by the

respondents while considering the company's application for environment clearance and after taking note of the nature of the project to be implemented in the Coastal Regulation Zone area and after being satisfied about the manner in which the project is to be implemented, the clearance has been granted, upheld the decision of the Pollution Concentration Board, and it is not desirable for this Court in this second writ petition, again to order for a detailed enquiry with regard to erection and establishment of the second respondent company, as the matter is pending consideration before the Supreme Court in SLP (C) No.No.7101 of 2009. It is for the Supreme court to see whether the grant of permission for erection and establishment of the second respondent PVC company at Cuddalore is against the provisions of law or against public interest or not.

10. For the aforesaid reasons, no relief can be granted in the present case. The writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petition is consequently dismissed.

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To

1. The Chairman,

Tamilnadu Pollution Control Board,

76, Mount Salai, Guindy,

Chennai 600 032.

2. The District Engineer,

District Environmental Engineer,

The Tamilnadu Pollution Control Board,

59, Seetharam Nagar,

Cuddalore 607 001