

Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 01/2017(SZ)

(With report dated 01.11.2017, 07.12.2020 and 18.05.2022)

R.L. Srinivasan, Chennai

Applicant

Versus

Union of India and Ors.

Respondent(s)

Date of hearing: 20.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER
HON'BLE PROF. A SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Saurabh Sharma and Mr. G. Stanley Hebzon Singh advocates

Respondent(s): Mrs. Me. Saraswathy adv for R-1
Ms. Gayathri adv represented Mr. S. Sai Sathya Jith adv for R-2
MR. Abdul Saleem, Mr. S. Saravanan and Mr. Vijay Mehanath
adv for R-3
Dr. D. Shanmuganathan adv for R-4 & R-5

ORDER

The issue raised: illegal constructions by TANGEDCO, obstructing water flow of Buckingham Canal and Kosasthalaiyar river without requisite clearance

1. Grievance in this application is against construction of roads in Buckingham Canal and Kosasthalaiyar river and its tributaries by Tamil Nadu Generation and Distribution Corporation (TANGEDCO). Prayer is to stop further construction and remove construction debris dumped in the

area, restoring the affected part of river behind Ennore Thermal Power Station, Chennai.

2. Case set out in the application is that Ennore Thermal Power Station (ETPS) has been set up by Tamil Nadu Electricity Board in 2008. Its capacity was enhanced in 2013. Environmental clearance for the project was granted by the MoEF&CC in 2008. Consents under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 were granted by the State PCB. The PP engaged contractors who encroached upon the Buckingham Canal by dumping construction debris and fly ash and also encroached and blocked the Kosasthalaiyar river behind ETPS. A road was being constructed for construction of foreshore facilities (coal conveyor corridor) by dumping mud, construction debris and fly ash which was in violation of the Water Act, 1974, Environment (Protection) Act, 1986 and CRZ Notification, 2011. Coal conveyor area has lot of mangroves and is ecologically fragile. The CRZ Clearance does not envisage such roads for construction. It has adverse environmental impact. Fly ash dykes obstruct flow of water from distributaries of Kosasthalaiyar river.

Procedural history - proceedings before the Tribunal and stand of opposite parties

3. The application was filed on 19.12.2016. The Tribunal sought response of the respondents - MoEF&CC, TANGEDCO, State PCB and TNCZMA and also sought reports about status of factual violations from a joint Committee. The matter has been considered by several orders in the light of stand of the parties and the reports in pursuance of orders of this Tribunal to which reference will be made to the extent necessary.

Stand of MoEF&CC after site inspection

4. The MoEF&CC filed a site inspection report dated 01.11.2017 that two approach roads have been laid for setting up coal conveyor system for movement of coal. Conveyor system involves crossing over the Buckingham Canal and Ennore Creek back water in three stages. Construction of roads requires prior approval from MoEF&CC and TNCZMA. Blocking of back water of Ennore Creek is without approval of MoEF&CC and TNCZMA. The road will obstruct the natural flow of water. The relevant part of the report is reproduced below:-

“It is inferred from above that

- i. M/s. TANGEDCO laid approach road no.1 at North Buckingham Canal located near western boundary of Ennore Thermal Power Station (ETPS) site for the construction of external coal conveyor system without obtaining the prior approval from MoEF&CC, New Delhi and Tamil Nadu Coastal Zone Management Authority (TNCZMA). However, the approach road no.1 has been reportedly removed during October, 2016 based on the directions of the District Collector, Tiruvallur District and the same is not exist at the site as observed during the visit.***
- ii. M/s. TANGEDCO has encroached upon and blocked the back waters of Ennore Creek beneath Ennore High Way bridge by establishing a approach road no.2 of 350 m length and 6 m width for the construction of external coal conveyor system without obtaining the prior approval from MoEF&CC, New Delhi and Tamil Nadu Coastal Zone Management Authority (TNCZMA).***
- iii. Approach road no.2 clearly obstructs the natural flow of water within the Ennore Creek which may perhaps cause flood vulnerability in that area. Livelihood of communities in the surrounding Ennore Creek who directly depend on fishing activity may also be affected.***
- iv. Ennore Creek wherein the approach road no.2 has been laid by M/s TANGEDCO falls within the Coastal Regulation Zone (CRZ) as per the Coastal Zone Management Plan (CZMP) for the State of Tamil Nadu as informed by the representative of TNPCB during the visit. In view of this, CRZ classification of this area and status of the land may be sought from the Competent Agencies. If CRZ violation has taken place appropriate***

action may be taken by the Competent Authority concerned.”

5. The State PCB filed its affidavit dated 28.11.2017 to the effect that temporary approach road was being removed so as to allow free flow of water. TANGEDCO has denied the violations.

6. In light of above broad pleadings, the Tribunal dealt with the issue of restoration of environment on account of illegal encroachments and constructions by the Project Proponent without requisite clearance from TNCZMA.

Order dated 13.12.2019 constituting joint Committee and report dated 7.12.2020

7. Vide order dated 13.12.2019, the Tribunal constituted a joint Committee comprising MoEF&CC, TNCZMA, State PCB, NEERI and IIT, Chennai to ascertain the extent of encroachments and to assess compensation for the damage to the environment. In pursuance thereof an interim report was filed on 25.09.2020, followed by final report dated 07.12.2020. The report dated 7.12.2020 concluded as follows:-

“9.0 CONCLUSION

- *The Public Works department (PWD-TN) in its letter dated 04-07-2015 to TANGEDCO, had provided right of way permission to carry out work along the Ennore creek and Buckingham canal in 3 stretches for its construction of coal conveyor system (on lease), with conditions to obtain all necessary clearances and permissions to carry out the proposed work in the CRZ limit. Since TANGEDCO has obtained EC and CRZ clearance only on 11-02-2019, and whereas, the temporary approach roads were constructed and removed during 2016 and 2017, it reckons to be a violation to carry out any work prior to the date of clearance received.*
- *From Bathymetry survey & sediment sampling, it is observed that, sediment samples collected from the locations of the approach roads that were laid and later removed are uniformly well of graded type.. However, **as it is established that minor remnants of impediments are left over, it is necessary to undertake a third party audit to verify the***

quantity of such materials left over in the creek and Buckingham canal for its removal. TANGEDCO had stated that about 7232 m³ of material (soil) used for construction of temporary roads were removed in 2017 was used to fill the low lying areas in NCTPS. The detailed third party audit may investigate and verify the details such as source of soil materials (used kg laying of temporary roads), characterization, transportation bills (involved in laying and removing of temporary roads) to quantify the materials used, contractor/vendor receipts (involved in laying and removing of temporary roads) as per day to day developments involved in laying and removal of temporary roads. **Following the third party audit report, the damage to environment can be ascertained and could be worked to quantify damages on the aspects of impact on the flow and environmental as well as the restoration cost to reinstitute to its pre road laying conditions.**

- The Satellite images shows there was no mangrove vegetation that could be identified during the years of study. Other infrastructures such as the road bridge, NTPC conveyor belt were already existing much earlier.
 - The data provided by the fisheries department show that fish catch has not decreased and in fact there is a steady increase from the year 2014-15 to 2015-19. However, the five years fish catch data provided by the fisheries department is of the entire Thiruvallur district and not specific to the Ennore creek region. The coastal stretch of Thiruvallur district would be near to 40 km, whereas the Ennore creek fish catch zone would not be a sizeable part of this stretch. Though, the Fisheries Department, Govt. of Tamilnadu was requested for data of fish catch within Ennore creek for the past 5 years, the department had responded with the statistics of marine fish catch that is available collectively only, i.e., for the entire Thiruvallur district and no data specific to Ennore creek region. Hence, with the present available data, it cannot be positively established that the fish catch was not impacted in the region. Hence, a Socio-Economic survey may be required in the affected fish community region to evaluate the aspect.
- Since, creeks are an essential component in facilitating biological, physicochemical and ecological processes, **it is further recommended to study the impacts on the creek bed ecosystem due to the said activities (construction and removal of temporary roads and its associated activities) with importance to Planktons community.**
- **Remote sensing and GIS study needs to be carried out to determine if there were any changes in landscape, ecology and biodiversity (terrestrial and marine) along the creek before laying of temporary approach roads, after laying of temporary approach roads and post removal of temporary roads to quantify damages to the environment.**

- *The aforementioned audit and studies are necessary in determining the environmental compensation as directed by the Hon'ble tribunal. I-fence, it is requested to the Hon'ble tribunal to provide direction and time to carry out the necessary studies.*
- *TANGEDCO has informed that once again temporary approach road in both Ennore creek & Buckingham canal needs to be laid in order to carry out the execution of coal conveyer system. Hence it may be directed to carry out impact assessment study for laying these roads by engaging MOEF&CC accredited agencies, so as to obtain necessary permission from the competent Authorities and carry out recommendations while laying the road, during usage and removal of the roads thereafter."*

Stand of TNEB and TN PCB in response to the report

8. Though according to the report there were violations which were remedied by removing the construction material and to determine compensation expert studies were needed, this suggestion was opposed by the TNEB on the ground that there were reports of the Remote Sensing, Anna University, Chennai on the issue of demarcation and classification of CRZ areas and about the socio-economic study of the expansion of the Thermal Power Project and also copy of EIA for expansion of the project which could facilitate the task of the Committee. The Tribunal directed the TNEB to provide such reports to the Committee which is said to have been done. The State PCB in its affidavit dated 18.05.2022, has referred to of report of Director, MoEF&CC and reports of the Department of Ocean Engineering, Indian Institute of Technology Madras to the effect that bathymetry survey has already been carried out to the effect that flow of water to the Ennore Creek and Buckingham Canal is not effected. Further, reliance has been placed on the report of the Institute of Remote Sensing, Anna University to the effect that there is no mangroves vegetation. Reliance has also been placed on report of the Institute of Remote Sensing, Anna University, carried out the superimposing of HTL, LTL and CRZ that the project is not within 500

mtrs. of HTL except a part of it for which necessary clearance from the CZMA will be taken. It is further stated that the fish catch has not decreased in the area as per report of the Fisheries Department. As per socio-economic study report of the Madras School of Social Work, Chennai – certain steps are required to be taken. As per report of the TANGEDCO encroachment have been removed and no further study is required. Finally, the recommendations in the report are as follows:-

“Recommendation of TNPCB based on the above reports filed by the TANGEDCO

It is respectfully submitted that by considering the above study reports, the the TANGEDCO may be directed to ensure the followings.

- *As suggested by the Department of Ocean Engineering, Indian Institute of Technology Madras, the TANGEDCO shall ensure that the flow of water and the eco-system in the Ennore Creek and in the Buckingham Canal area shall not be affected due its activities under any circumstances.*
- *The TANGEDCO shall ensure that the existing mangrove in the vicinity shall not be affected due its activities under any circumstances.*
- *As reported by the IRS, Anna University, the project site of M/S. TANGEDCO Limited, a part of project site falling within CRZ-II (100m from creek/River) i.e., 100m from HTL of Buckingham Canal, the TANGEDCO shall obtain necessary clearances from the competent authority before starting any activity.*
- *As suggested by the Madras School of Social Work, Chennai, the TANGEDCO shall render its assistance to ensure the followings.*
 - ✓ *Specialized agencies such as CMFRI, CIFNET, MSSRF and Department of Fisheries may collaborate to have special plans for enhancing the livelihood of fishing community in the Ennore coast by implementing innovative self employment schemes and to cope up with the latest technology (Deep sea fishing, usage of electronic gadgets etc.)*
 - ✓ *To install artificial reef in Ennore coast to increase fish breeding and catch*
 - ✓ *The district administration may necessary take steps by arranging interface session between fishing community and PSU of Ennore coast to review the environmental issues at frequent intervals.*

- ✓ *One of the headmistress of a nearby school suggested that vocational training can also be imparted to the school children, to compete in the job market in future.*
- ✓ *Most of the respondents of the non fishing area expressed their views that infrastructure up gradation may be addressed on priority basis to enable them to have a quality living and reduce risk factors related to socio economic and environmental degradation.*
- ✓ *To ensure drinking water supply and maintain quantity and quality in all the study areas.*
- ✓ *To impart skill training courses in all the study areas through coordinating with various Government Departments, Educational institutions and Non-Governmental Organizations.*
- ✓ *To create awareness about conservation of water and also the importance of rain water harvesting among the community.*
- ✓ *It is also suggested that TANGEDCO may establish a special out sourced cell to conduct Pre Funding appraisals, stakeholders' involvement in CSR interventions, monitor the CSR initiatives, and act as a link between the community and TANGEDCO for fulfilling the objectives of CSR initiatives. This proposed CSR cell would help the interventions and enhance the branding of TANGEDCOs CSR interventions.*
- ✓ *TANGEDCO through the commissioning of the power project must address the water issue in Ennore.*
- ✓ *TANGEDCO may also take steps to protect the environment in the Ennore coast by prioritising greenery initiatives.*
- ✓ *One of the major grievances of the inhabitants of Ennore coast is that TANGEDCO may consider sustainable development goals which will have a visible impact in the sectors of Water, Sanitation, Environment Protection and Livelihood support."*

Our consideration and final order

9. We have heard learned Counsel for the appearing parties and considered the matter in the light of material referred to above.

10. The applicant has referred to written submissions filed on 10.02.2021 and submitted that in view of inspection carried out by the MoEF&CC as per its report dated 01.11.2017, the encroachments by the PP are obstructing the natural flow of water in the creek and river.

Approach Road No. 2 is in violation of CRZ Notification. Further report of the joint Committee, in pursuance of order dated 13.12.2019, shows CRZ violations for which compensation was liable to be paid.

11. As against the above, learned Counsel for the respondents rely upon the stand of the State PCB dated 18.5.2022 to the effect that encroachments stand removed and there is no obstruction to the flow of the rivers. Only part of project is in CRZ for which clearance has to be taken and recommended remedial action is to be undertaken.

12. We thus find that even as per stand of the State PCB dated 18.5.2022, reports of MoEF&CC dated 1.11.2017 and of the joint Committee dated 7.12.2020 remain unquestioned with regard to factual situation as prevailed at the time of the said reports. Thus, for the said past violations, the PP remains accountable, apart from carrying out recommendations of the PCB in its affidavit dated 18.5.2022. Compensation thus needs to be determined for the said violations on 'Polluter Pays' principle. Let the same be done by a joint Committee of CPCB, State PCB and District Magistrate within three months, following due process. If any grievance survives, it will be open to the aggrieved parties to take remedies. However, having regard to the magnitude and period of violation, the PP is directed to deposit Rs. 5 crores with State PCB within two months towards interim compensation which may be utilized for restoration of environment in the area by preparing an integrated restoration plan for restoration of Buckingham Canal, Ennore Creek and Kosasthalaiyar river, including incidental issues like, degraded coastline, backwater, restitution of mangroves, maintaining marine flora and fauna, and, green aspects.

13. The PP may take further remedial steps in light of above recommendations in a time bound manner which may be overseen by the State PCB.

The application is disposed of.

A copy of this order be forwarded to CPCB, State PCB and District Magistrate by e-mail for compliance.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Sudhir Agarwal, JM

Dr. Satyagopal Korlapati, EM

Prof. A. Senthil Vel, EM

July 20, 2022
Original Application No. 01/2017(SZ)
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