

Item No.1:

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

Original Application No. 05 of 2022 (SZ)
(Through Video Conference)

IN THE MATTER OF:

1) R.L. Srinivasan
S/o. R. Lakshmipathi
Aged about 42 years,
31/36, Porkali Amman Street,
Kattukuppam, Ennore, Chennai - 600 057.

2) Logeshwaran. G
S/o. Gowreeswaran. S
Aged 21 years,
No.8/9, 5th Street, Varadharaja Perumal Nagar,
Thiruvottiyur, Chennai - 600 019.

...Applicant(s)

Versus

1) Tamil Nadu Pollution Control Board
Represented by its Member Secretary,
No.76, Mount Salai, Guidy,
Chennai.

2) M/s. Tamil Nadu Generation and Distribution Cooperation
(TANGEDCO)
Ennore Thermal Power Station
Represented by its Chairman cum Managing Director,
5th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

3) The District Collector,
Chennai,
Fourth Floor, M. Singaravelar Maaligai,
62, Rajaji Salai, Chennai Collectorate,
Chennai - 600 001.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. S. Sai Sathya Jith for R1.
Dr. D. Shanmuganathan for R3.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

1. This is an application filed by the applicants seeking intervention of this Tribunal under Section 14 of the National Green Tribunal Act, 2010 to direct the Respondents No.1 and 3 to reschedule the public hearing for the 2nd Respondent 1x660 MW Coal-fired thermal power plant in Ennore once the restrictions imposed by the State Government vide G.O. (Ms.) No.3 dated 03.01.2022 or subsequent Government Orders and notify the same in accordance with the procedure prescribed in the EIA Notification, 2006.
2. It is alleged in the application that as per Judgment dated 17.09.2021 in **Appeal No.06 of 2020 (SZ) [R.L. Srinivasan Vs. Union of India and Anr.]**, this Tribunal had partly allowed the appeal and directed the MoEF&CC to conduct public hearing and after considering the views expressed by the public in the public hearing, pass appropriate orders in accordance with law. It is on that basis, at the request of the TANGEDCO, the Tamil Nadu Pollution Control Board (TNPCB) had issued a public notice in two newspapers viz., The Times of India and Dinakaran Daily dated 25.11.2021, fixing the date of public hearing on 06.01.2022. It is on that basis, the Tamil Nadu Pollution Control Board is going to conduct the public hearing tomorrow (i.e. 06.01.2022). But due to the surge in Covid-19 in the new form of Omicron, the Government of Tamil Nadu has issued

certain directions as to how the public gatherings will have to be restricted. But, the District Collector is of the view that the public hearing is being conducted by the TANGEDCO which is not correct. In fact, as per the EIA Notification, 2006, at the request of the project proponent, the TNPCB has to conduct the meeting, after making necessary publication giving clear 30 days time.

3. According to the applicants, if the public hearing is allowed to conduct with restricted numbers, the purpose of public hearing will be defeated. Further, it is not advisable to conduct a public hearing in view of the surge in Covid - 19 patients and effect of spread of Omicron at a speedy level which will have great impact on health issues as well.

4. So under such circumstances, the applicants filed this application seeking the following reliefs:-

"a. Direct the 1st and 3rd Respondents herein to re-schedule the public hearing for the 2nd Respondent's 1x660 MW coal-fired thermal power plant in Ennore once the restrictions imposed by the State Government vide G.O. (Ms.) No.3 dated 03.01.2022 or subsequent government orders and notify the same in accordance with the procedure prescribed in the EIA Notification, 2006.

b. Issue such other orders as it deems fit in the interest of the case and render justice."

5. Heard Mr. A. Yogeshwaran, the learned counsel for the applicants, Mr. S. Sai Sathya Jith for the Tamil Nadu Pollution Control Board and Dr. D. Shanmuganathan for 3rd Respondent.

6. Considering the fact that the matter is of the urgency and this Tribunal felt that the original application itself can be disposed with certain directions. We are dispensing with notice to the 2nd Respondent.

7. The learned counsel appearing for the applicants argued that in view of the notification issued by the MoEF&CC dated 14.09.2020, number of participants will have to be restricted to 100 or such ceiling as has been fixed by the Government from time to time. Further, considering the present situation prevailing in the State, the Government of Tamil Nadu has issued another Government Order vide G.O. (Ms) No.3 dated 03.01.2022, whereby restrictions have been made regarding public gathering to avoid spread of Covid - 19 (Omicron variant) till 10.01.2022 and certain guidelines have been issued in this regard. Further, if the number of persons are restricted, then the purpose of public hearing will be defeated. Even as per the Annexure of the EIA Notification, 2006 regarding procedure for public hearing, certain circumstance warrants postponement of the public hearing. So under such circumstances, he prayed for allowing the application.

8. On the other hand, the learned counsel appearing for the Tamil Nadu Pollution Control Board submitted that the application is not maintainable under Section 14 of the National Green Tribunal Act, 2010 and the statutory functions of the authorities cannot be enjoined by the Tribunal. Further, it is for the authorities to consider whether they can continue with the public hearing on the basis of the directions issued by the Government and they are bound to follow the directions issued by the Government from time to time and they will only abide the directions issued by the Government in this regard.

9. The learned counsel appearing for the District Collector also makes his submission in tune with the submissions made by the 1st Respondent/TNPCB.

10. At the outset, we may mention that Section 14 of the National Green Tribunal Act, 2010 deals with the dispute regarding pollution or other environmental issues or any danger being caused on account of non-implementation of the provisions provided under the statutes covered by Schedule - I attached to the NGT Act, 2010. So as such, the prayer in this application is not coming within the purview of Section 14 of the NGT Act, 2010. Further, EIA Notification, 2006 mandates public hearing and a procedure has been provided under the Annexure attached to the EIA Notification, 2006 which gives discretion for the authorities who are conducting the public hearing to postpone the same, if the conditions are not conducive for the purpose of conducting the public hearing. So, it is for the authorities to consider whether they will have to proceed with the public hearing or not. Further, the Office Memorandum issued by the MoEF&CC during 2020 considering the situation prevailing at that time regarding public hearing also did not completely prohibit the conduct of public hearing, but certain restrictions have been imposed as to how that will have to be conducted. So, it is for the Pollution Control Board and the District Collector to consider the question as to whether the public hearing will have to be postponed to a future date depending upon the Government Orders issued and if they feel that, that will have to be done, they are at liberty to do the same.

11. This Tribunal cannot direct the authorities not to exercise their statutory powers or give any directions as to how that will have to be exercised as well. It is for them to use their discretion, considering the circumstances and take appropriate decision in accordance with law.

12. So under such circumstances, we feel that leaving open the discretion for the Tamil Nadu Pollution Control Board and the District Collector to look into the issue and take appropriate decision in accordance with law, we are not issuing any direction, stopping them from conducting public hearing and we are also not expressing our opinion or interfering with the discretion of the District Collector and the TNPCB to take appropriate decision as to whether they will have to proceed with the public hearing or not, considering the circumstances prevailing in that area as well.

13. The Registry is directed to communicate this order to the Chairman, Tamil Nadu Pollution Control Board and also to the District Collector by e-mail immediately for their information and compliance of the direction.

14. With the above observations and directions, this Original Application is disposed of.

Sd/-

.....J.M.
(Justice K. Ramakrishnan)

Sd/-

.....E.M.
(Dr. Satyagopal Korlapati)

O.A. No.05/2022 (SZ),
05th January, 2022. Mn.