

Item No. 04

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 128/2017(SZ)

S. Joel

Applicant(s)

Versus

The Inspector General of Forests & Ors.

Respondent(s)

Date of hearing: 28.11.2018

**CORAM : HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Ritwick Dutta, Advocate

For Respondent (s): G.M.S.N. Sheriff, Advocate
S.V. Vijay Prashanth, Advocate
C. Manishankar, Senior Advocate with M. Arokiya Raj,
K. Krishnamurthy, Advocates
A.R.L. Sundarean, Proxy Counsel for Mrs. A.L.
Gandhimathi, Advocate
Kamath K., Advocate
Mr. Rahul Balaji, Advocate

ORDER

1. Shorn of all details, the essential contention raised in the original application is that the Government of Tamil Nadu had accorded approval for diversion of 0.055 ha of forest land in Sy. No. 600 of Srivaigundam village in Thoothukudi Division to TWAD Board, Thoothukudi for construction of Intake well along with control room and foot bridge, for drinking water purposes by virtue of the Guidelines dated 03.01.2005 issued by the Ministry of Environment, Forests & Climate Change (MoEF&CC) whereby the States had been empowered to grant approval under Section 2 of the Forest Conservation Act, 1980 in respect of certain specific projects. It is stated that the approval accorded by the State

Government *vide* order dated 07.03.2008 for diversion of 0.55 ha of forest land was only for drinking water purpose.

2. It is the case of the applicant that the Respondents No. 3 to 9 have instead of confining the use of water for drinking purposes, had permitted the Respondents No. 10 to 12 to use the water for industrial purpose. As per the learned Counsel for the applicant, this is in violation of the permission accorded which as per him has a statutory character.
3. In the response filed by the MoEF&CC, it is stated that the user agency i.e. Tamil Nadu Water Supply and Drainage Board (TWAD), has supplied water to industries against the purpose for which permission was accorded by the State Government and has also utilized 0.025 ha of forest land in excess of the area for which approval had been accorded for diversion.
4. It is further stated that the State Government of Tamil Nadu had accorded approval for diversion of 0.055 ha of forest land in S. No. 600 in Srivaigundam Village in Tuticorin for construction of Intake well along with control room and foot bridge for drinking water purposes under Section 2 of the Forest Conservation Act, 1980 under "General Approval" category, subject to certain terms and conditions. The approval had been accorded vide G.O. (Ms). No. 18, Environment and Forests (FR.10) Department dated 07.03.2008.
5. It is the stated case of the MoEF&CC that if the proposal under Forest Conservation Act, 1980 involves diversion of forest land for both drinking water and industrial purposes, then the proposal would not fall under the purview of "General Approval" category under Forest Conservation Act, 1980. In the instant case, according to MoEF&CC, the user agency has acted in violation of the Act having utilized additional area measuring 0.025 ha of forest area for

non-forestry purposes in addition to the change in the purpose for which the approval had been accorded by the State Government. It is thus stated that the State Government would require to take action as per provision of the Forest Conservation Act, 1980 and the Forest Act against the user agency for violation of the Forest Conservation Act, 1980.

6. It is further contended that if the user agency intends to draw water for both drinking and industrial purposes, it would require the State Government of Tamil Nadu to revoke the approval accorded for diversion of 0.055 ha under the "General Approval" category and a fresh application necessary to be filed for such purposes to the Regional Office of the MoEF&CC.

7. The State respondents' reply also reiterates the very contentions of the MoEF&CC in its affidavit.

8. Mr. C. Manishankar, learned Senior Counsel appearing on behalf of the TWAD submits that in consideration of the legal position, it has moved the State Government for clearance for diversion of the area in question for both drinking water and industrial purposes on 23.07.2018 and is yet to reach the level of the MoEF&CC.

9. Considering the admitted facts and the circumstances set out above, we direct the TWAD to forthwith prohibit the use of the water drawn against the forest clearance for 0.055 ha which admittedly had been granted only for the purpose of drinking water making it quite clear that any other order passed by this Tribunal earlier contrary to this shall stand hereby superseded.

10. We also clarify that by this order, we do not prohibit use of water for drinking purpose by the housing colonies, schools, hospitals, etc. and is only confined to the industrial units.

11. With the above directions, the application stands allowed.

12. No order as to cost.

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 28, 2018
DV



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.11935 OF 2018

**M/S. SOUTHERN PETROCHEMICAL
INDUSTRIES CORPN. LTD.**

... APPELLANT(S)

VS.

S. JOEL & ORS.

... RESPONDENT(S)

WITH

**C.A.Nos.12227 & 12224 of 2018
and C.A.Nos.834 & 1332 of 2019**

O R D E R

1. Appeals Admitted.

2. This batch of appeals arises from a decision of the National Green Tribunal¹ dated 28 November 2018.¹

3. On 15 June 2004, the Government of India in the Ministry of Environment and Forests² issued

Signature Not Verified
Digitally signed by
SARITA PUROHIT
Date: 2019.02.09
13:40:35
Reason: 

1 "The Tribunal"

2 "MoEF"

guidelines regulating the diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980. These guidelines were clarified on 3 January 2005. The guidelines delegate to the state governments the authority to permit diversion of forest land up to one hectare for the purpose of government departments for public utility purposes. The permissible activities are :

- "1. Schools;
2. Dispensary/hospital;
3. Electric and Telecommunication lines;
4. Drinking water;
5. Water/rainwater harvesting structures;
6. Minor irrigation canal;
7. Non-conventional sources of energy;
8. Skill up-gradation/vocational training centre;
9. Power sub-stations;
10. Communication posts; and
11. Police establishments like police stations/outposts/border outposts/watch towers, in sensitive areas (identified by Ministry of Home Affairs)."

(emphasis supplied)

4. Based on the above guidelines of the Government of India, on 7 March 2008, the Government of Tamil Nadu accorded approval for

diversion of 0.055 hectares of forest land in Sy.No.600 of Srivaigundam Village in Thoothukudi Division of the Tamil Nadu Water Supply and Drainage Board (TWAD Board) for construction of an intake well (along with a control room and foot bridge) for "drinking water purposes". This permission was subject to certain conditions. The facility has been set up.

5. A proceeding was instituted before the National Green Tribunal by the first Respondent, complaining that instead of confining the use of water for drinking purposes, TWAD Board has permitted the use of water for industrial purposes.

6. The Union Ministry of Environment, Forests and Climate Change (MoEF&CC) submitted before the Tribunal that if the proposal involved a diversion of forest land both for drinking water and industrial purposes, then it would not fall within the purview of the "General approval" category under the Forest Conservation Act, 1980. MoEF&CC submitted that the user agency had acted

in violation of the Act by utilizing an additional area measuring 0.025 hectares of forest area for non-forestry purposes in addition to a change in the purpose for which the approval was accorded by the State Government.

7. TWAD Board submitted before the Tribunal that on 23 July 2018, it has moved the State Government to approach MoEF&CC for its clearance, so as to permit the use of the area in question for both drinking water and industrial purposes.

8. The proposal submitted by TWAD Board has not yet been received by the Union Government. It is pending with the Government of Tamil Nadu.

9. The Tribunal issued a direction to the TWAD Board to prohibit the use of water drawn under the forest clearance for 0.055 hectares for industrial purposes, since it was granted only for the purpose of drinking water. The Tribunal, however, clarified that it was not prohibiting the use of water for drinking purposes by housing colonies, schools, hospitals, etc. and the prohibition was only confined to the industrial units.

10. During the pendency of the proceedings before the Tribunal, an interim order was initially passed on 31 May 2017, in the following terms :

"In so far as the area concerned, the water shall be drawn only for supply of drinking water. Therefore, there shall be an interim order directing the respondents to strictly act in accordance with G.O.Ms.18 Environment and Forest (FR.10) Department dated 7.3.2008 supplying water only for drinking purpose until further orders of this Tribunal."

11. This order was modified on 7 July 2017, to the following effect :

"Therefore, as an interim arrangement, we modify our order dated 31.5.2017 to the effect that the situation which was in existence before our interim order dated 31.5.2017 shall be continued, however, subject to the condition that the 3rd respondent Board shall closely scrutinise whatever water is required for industrial purpose and also subject to the condition that sufficient quantity of water is available for drinking purpose for the people."

The above arrangement held the field until the proceedings were disposed of by the impugned order.

12. Initially, when this Court was moved in a batch of civil appeals, on 11 January 2019, a grievance was urged on behalf of Tuticorin Thermal Power Plant to the effect that as a result of the order of the Tribunal, serious hardship was faced in its operational activities and that the situation was assuming a critical dimension in the absence of regular supply of water. Accordingly, while issuing notice this Court directed that the order of the Tribunal shall remain stayed insofar as the Tuticorin Thermal Power Plant is concerned, subject to the condition that drinking water needs are fully met. This Court clarified that any supply thereafter of surplus water to the power plant shall be in accordance with the terms of the interim order (of the Tribunal) dated 7 July 2017, extracted above. TWAD Board was directed to file an affidavit indicating

- i) the extent of water which is available for distribution;
- ii) the water which is required to fully meet the drinking water needs; and

- iii) the surplus, if any, that is available.

13. On 28 January 2019, finding that the TWAD Board had not indicated a bifurcation of the requirements of water for drinking and industrial use, this Court called for fresh affidavits on the anticipated requirements for the period between 1 February 2019 and 30 June 2019. An affidavit has been filed on 31 January 2019 on behalf of the Board.

14. Learned senior counsel appearing on behalf of the Board has drawn our attention to relevant extracts from the affidavit, in support of the submission that even after meeting drinking water requirements fully, there is surplus water available which can be allocated for industrial use. The affidavit indicates that requirement of water for drinking, irrigation and other industrial purposes, in Tirunelveli and Thoothukudi Districts, is met from the water drawn from Tamirabarani River. For that purpose, water is released from three dams, namely, (i) Papanasam

Dam; (ii) Servalaru Dam; and (iii) Manimuthar Dam.

Paragraph 6 of the affidavit is extracted below :

"6. The Water Account details as annexed prepared to know the storage position of dams and anticipated Inflow of water from the data obtained form the office of the PWD and Electricity Board as detailed below :-

i) Expected inflow of water and the storage of water to be used is 10285.60 MCft (31.01.2019 to 30.06.2019)

ii) Losses due to evaporation and leakages is estimated as 1028.56 MCft

iii) Balance quantity of water is 9257.04 MCft

iv) Water requirement for drinking use from 31.01.2019 to 30.06.2019 (150 days x 167.73 Cusecs x 0.0864) is 2173.78 MCft [.0864 is conversion factor from cusecs to MCft]

v) Water required for industrial usage from 31.01.2019 to 30.06.2019 (150 days x 52.27 cusecs x 0.0864) is 742.22 MCft

vi) Anticipated average release of water from 31.01.2019 to 31.03.2019, 1000 cusecs per day for irrigation (60 days x 1000 cusecs x 0.0864) is 5184.80 MCft

vii) Expected inflow and available storage for use of dam on 30.06.2019 is $(9257.04 - (2173.78 + 742.22 + 5184.00)) = 1157.04$ MCft"

15. Accordingly, it has been submitted that the

water available in the dams is sufficient to meet the requirement of water for drinking, irrigation and industrial purposes upto 31 March 2019 and for meeting the requirement of water for drinking needs and industrial purposes upto 30 June 2019 in both Tirunelveli and Thoothukudi Districts. The affidavit states that in case there is any shortfall in the expected inflow, it will be compensated with the seasonal rains in the lower part of the dams in Tamirabarani River basin and irrigation tanks, as per the report of the PWD authorities. Finally, it has been stated that if any shortfall arises in the expected inflow of water, the first priority will be given to drinking water requirements.

16. Placing reliance on the affidavit which has been filed by the TWAD Board, Shri Ranjit Kumar and Shri Huzefa Ahmadi, learned senior counsel submitted that it would be appropriate if the stay granted by the Tribunal is modified so as to permit the release of water for industrial purposes, subject to the drinking water needs

being fully met. Learned counsel submitted that a blanket stay of the nature which has been issued by the Tribunal will not serve any purpose.

17. On the other hand, Ms. Anitha Shenoy, learned counsel appearing on behalf of the first respondent, who is the original petitioner before the Tribunal, submitted a chart containing the data of the Government of India in the Ministry of Earth Sciences (India Meteorological Department), Regional Meteorological Centre, Chennai. Learned counsel submitted that for Thoothukudi District official statistics show that the rainfall as of 31 January, 2019 has been below normal (-100 or as the case may be -92). Moreover, on the basis of the data collated from the affidavit of the Board, it has been submitted that there is a precipitous decline in the current position of water in the reservoirs in Tirunelveli District and in consequence, it would not be appropriate to issue any direction, modifying the direction of the Tribunal.

18. We may note that it was urged on behalf of

the appellants that the permission which was granted on 7 March 2008 by the State Government for the diversion of 0.055 hectares of land for the construction of an intake well for drinking water purposes, did not contain a prohibition for utilizing the water for industrial purposes. We cannot accept the submission. Both before the Tribunal as well as before this Court, the consistent position of the State Government as well as of MoEF&CC has been that Government of India delegated its authority under the Forest Conservation Act, 1980 to the states to grant a diversion of forest land upto one hectare and for specified projects of a public utility. Among them is drinking water. Hence, in the face of this position, the submission cannot be accepted.

19. The position as it now exists is that TWAD Board has moved the State Government with a proposal to seek the clearance of MoEF&CC for the purpose of authorizing the use of the surplus water also for industrial purposes under the Forest Conservation Act, 1980. TWAD Board

submitted before this Court that even after meeting the drinking water requirements fully, a surplus of water is available which it may be permitted to utilize for industrial purposes. On the other hand, as we have noted earlier, this is disputed on behalf of the petitioner before the Tribunal who has submitted that there has been a paucity of rain fall, as a result of which, Thoothukudi District has recorded scarcity conditions.

20. In our view, it would be necessary for this Court to put in place an administrative mechanism that would ensure that a decision to release water for industrial purposes is monitored by the Collector of the District who shall conduct a due verification of the data which is available with the TWAD Board. The Collector should independently assess the situation so as to ensure that the need for drinking water and irrigation is not compromised.

21. We, accordingly, direct that within a period of one week from today the Collector responsible

for Thoothukudi division shall convene a meeting of all the concerned departments, including the Public Works Department, the Irrigation department and the TWAD Board. The Collector shall ascertain whether any surplus water is available after fully meeting the requirement for drinking water. The Collector shall conduct a fortnightly review of the position thereafter to determine as to whether any further direction or modification is required to meet the exigencies of the situation. If the Collector does find that the data which has been produced is adequate to sustain the conclusion in regard to the availability of surplus water after fully satisfying the need for drinking water, directions may be issued for allocating a suitable quantity of water for industrial purposes. We reiterate that this should be without in any manner compromising the present and anticipated drinking water needs of the residents of the district concerned. Until the Collector takes a decision and for one week from today we restore the position as it obtained under the interim

order of the Tribunal dated 7 July 2017 to facilitate the supply of water for industrial purposes, including for the Tuticorin Thermal Power Plant. This is subject to the condition that drinking water requirements are fully met on priority. Thereafter, parties shall abide by the decision of the Collector. Until the Collector takes a decision, the interim order which we have passed in the case of Tuticorin Thermal Power Plant shall also continue in operation.

22. Insofar as the proposal under the Forest (Conservation) Act 1980 is concerned, we are apprised that TWAD Board had forwarded it to the State Government on 11 June 2018. We have been apprised that there were communications between the State Government and the Board with a view to rectifying certain deficiencies in the proposal. Be that as it may, we direct that within a period of two weeks from today, a joint meeting be held of the representatives of the State Government and of the TWAD Board to resolve the issue. The proposal shall thereupon be forwarded to MoEF&CC

within three weeks from today. The competent authority shall take a decision on the proposal in accordance with law within a period of two months thereafter. Any allocation of water for industrial purposes in the meantime shall abide by such final decision as may be arrived at by the Union of India after considering the proposal. We have not expressed any opinion on the merits of such a proposal.

23. We dispose of the appeals in the above terms. Pending applications, if any, shall also stand disposed of. There shall be no order as to costs.

.....J.
[Dr. DHANANJAYA Y. CHANDRACHUD]

.....J.
[HEMANT GUPTA]

New Delhi;
4 February 2019.

ITEM NO.64

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).11935/2018

M/S. SOUTHERN PETROCHEMICAL INDUSTRIES CORPN. LTD. Appellant(s)

VERSUS

S. JOEL & ORS. Respondent(s)
(With appln.(s) for exemption from filing c/c of the impugned judgment and stay)

WITH

C.A.No.834/2019 (XVII)
(With appln.(s) for permission to file appeal, exemption from filing c/c of the impugned judgment, permission to file addl. documents/facts/annexures and ex-parte stay)

C.A.No.12224/2018 (XVII)
(With appln. for ex-parte stay)

C.A.No.12227/2018 (XVII)
(With appln.(s) for exemption from filing c/c of the impugned judgment and stay)

CA No.1332/2019 (XVII)
(With appln.(s) for exemption from filing c/c of the impugned judgment and ex-parte stay)

Date : 04-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)	Mr. Ranjit Kumar, Sr. Adv. Mr. K.K. Mani, AOR Ms. T. Archana, Adv.
	Mr. Huzefa Ahmadi, Sr. Adv. Mr. Balaji Srinivasan, Adv. (AAG) Mr. Vinodh Kanna B., AOR Ms. S. Valarmathi, Adv. Ms. Pallavi Sengupta, Adv.

Mr. Ravindra Shrivastav, Sr. Adv.
Mr. C. Paramasivam, Adv.
Mr. M. Avokiyaraj, Adv.
Mr. M. Yogesh Kanna, AOR

For Respondent(s) Mr. K.V. Vijayakumar, AOR
Mr. R. Naveenraj, Adv.
Ms. Purbitaa Mitra, Adv.

Ms. Anitha Shenoy, Adv.
Mr. Y. Arunagiri, Adv.
Mr. Ramesh, Adv.
for Mr. P. Soma Sundaram, AOR

Mr. Sanjai Kumar Pathak, Adv.
for Mr. G.S. Makker, AOR

Mr. Mahesh Agarwal, Adv.
Ms. Aastha Mehta, Adv.
Mr. Rajesh Kumar, Adv.
for Mr. E.C. Agrawala, AOR

UPON hearing the counsel the Court made the following
O R D E R

Appeals admitted.

The appeals are disposed of with no order as to costs in terms of the signed reportable order.

(Saroj Kumari Gaur)
Branch Officer

(Sarita Purohit)
AR-cum-PS

(Signed reportable order is placed on the file)

TAMILNADU WATER SUPPLY AND RAINAE BOARD

From

M.Jeyaseelan, B.E.,
Executive Engineer,
TWAD Board, Maintenance Division,
Thoothukudi.

To

The District Forest officer
Thoothukudi district
Thoothukudi

Lr. No:18817/ F 20MGD/ JDO/ 2017/ dated 20.9.17.

Sir,

Sub: TWAD Board - 20 MGD WSS - Executed and commissioned during the year 1975 with North main channel - Arumugamangalam as source and later shifted to upstream side Srivaikundam Anaicut - Permission sought for Constructions Intake well, Foot Bridge and Control room for supply of water to industries as well as for drinking purpose and to Divert forest land to an extent of 0.055 ha. to non forest purpose in the prescribed format - Recommended by the District Collector - Scrutinized and recommended by District Forest officer and Conservator of forest - G.O accorded approval for 0.055 ha. to construct structures for drinking purpose - Forest land handed over for execution & commissioned in the year 2011- Mr. Joel file a petition before NGT and got order for stay the operation and latter modified the order and direct to seek permission of MoEF&CC for supply of water to industries -Notice of Violation issued by District forest officer - detailed reply submitted reg .-

Ref:

1. Executive Engineer TWAD Board - Urban division Thoothukudi addressed to District Forest Officer Thoothukudi District Letter No: 2910/JDO1/ F 20MGD/ 2007/ dated 25.10.2007.
2. District Collector Thoothukudi addressed to DFO Thoothukudi District - ROC NO: PA9 6801/07 Dt 30.10.07.
3. District Forest Officer Thoothukudi District Thoothukudi addressed to the Conservator of forest Tirunelveli Circle Tirunelveli C.No: D/7868/2007/ Dt 09.11.2007.
4. Conservator of Forest Tirunelveli circle addressed to the Principal chief conservator of Forest Chennai C.No: D/12455/2007 Dt.04.12.2007.
5. The Principal conservator of Forest Chennai addressed to the Secretary Environmental and Forest Department Ref No: 754/74244/2007 Dt 20.12.2007.
6. GO Ms No:18 Environment and Forest department Dt: 07.03.2008.
7. BP Ms.No.45 PM Wing dated 29.5.2003
8. BP Ms.No.39 PM Wing dated 13.4.2005

9. Orders of Hon'ble National Green Tribunal South zone Chennai dated 7.7.2017
10. Notice issued by the District Forest officer Thoothukudi division Thoothukudi Vide C No D/2016/2017/ Dated 3.8.2017
11. EE /Maint Dn/ TWAD Bd/Thoothukudi Ir no. 18817/F.20 MGD /JDO/2017/ dated .8.2017 addressed to EE/RWS Dn / TWAD Bd /Thoothukudi.
12. Executive Engineer TWAD Bd Maintenance Divn Thoothukudi letter no.18817/F.20 MGD /JDO/2017/ dated 23.8.2017 addressed to District Collector Thoothukudi.
13. District Collector Thoothukudi Lr No.18817/F.20 MGD /JDO/2017/ dated 29.8.2017 addressed to District Forest officer Thoothukudi.

(((((()))))

With reference to the Notice issued by the District Forest officer Thoothukudi cited in the ref -10 regarding Violations of G.O Ms No. 18 of Environment and Forest department dated 07.03.2008 in 20 Mgd WSS - Closed conduit system. I submit the following details for kind consideration please.

1. The High power committee constituted by Tamilnadu Government for Thoothukudi area development has recommended that the requirement of water for the industries shall be tapped from Thamiraparani River vide G.O Ms No:2289 Public Work Department Dt.12.11.1970. Accordingly a proposal for tapping the water for industries ie 20 MGD from North Main Canal near Arumugamangalam tank from Srivaikundam anaicut had been prepared at a cost of Rs.470 Lakhs. As per the proposal, the raw water from North Main canal - Arumugamangalam tank was pumped to Manjalneerkayal treatment site where it was treated to the drinking water standards and supplied to the industries. From the industries own sump it had been used for drinking needs and for industrial purposes after required treatment for the concerned industries. This scheme was commissioned in the year 1975 and functioning till 28.2.2011.
2. Due to objection in drawl of water, the Agriculturist got direction from Honorable High Court of Madras to consider the proposal of tapping water directly from

Srivaikundam Anaicut through closed conduit system. Accordingly a proposal for providing closed conduit system to 20MGD WSS had been accorded administrative sanction for Rs.21.93 Cr. to draw 20MGD of raw water directly from Srivaikundam Anaicut through intake well of 10M dia and other auxiliary units to pump the water through closed conduit system to Iruvappapuram and then the water was conveyed through existing arrangement to Manjalneerkayal treatment plant site .The proposal was implemented as per B.P. Ms.No.39 dt.13.04.2005. The scheme was executed by then Urban Division Thoothukudi .On completion of the scheme the related records and files were handed over to RWS division Thoothukudi for further follow up action .

3. At present 20 MGD WSS closed conduit system is not in functional status and it was stopped from 7th jan 2017 onwards considering the poor storage in dams to meet the drinking water requirement of public during summer. In this situation an Advocate Thiru S.Joel , filed an application before the National Green Tribunal south Zone in application no.128 / 2017 seeking directions to stop the function of 20 Mgd WSS on the ground that TWAD Bd violating G.O Ms No. 18 dt7.3.2008 of Environment & Forest Dpt. The Hon'ble National Green Tribunal has also passed an interim order to stay the operation of 20 MGD WSS and **on 7th july 2017 Hon'ble Judges passed an interim order modifying the earlier order dt 31.5.17 . In the order it has been noted that " the supply of water for the industrial activities which is stated to be on contributory basis by these industries, has been continued for the past many years and it was taking note of all these facts only, the conservator of Forests has given recommendation to the Principal Chief Conservator of Forests who in turn, has given his recommendations to the Government of Tamil Nadu on 20.12.2007. The Government of Tamil Nadu while passing G.O Ms No: 18 E&F (FR 10) department dated 7.3.2008 has not chosen to mention to**

other purposes like industrial activities and restricted only for drinking purposes alone and it appears that there is a mistake in passing such order" Further applying the principle of sustainable development, the industries should not allowed to the run out of water, There is another issues viz the employees working in the industries who are residing in the said area are also deprived of water. Therefore, as an interim arrangements, the earlier order dated 31.5.2017 is modified to effect that the situation which was in existence before the interim order dated 31.5.2017. Further NGT also directed the user agency in the mean time to approach MoEF & CC for seeking permission. Accordingly a proposal seeking permission from Forest Dept have been sent to District forest officer Thoothukudi by the District Collector vide ref -13 .

4. Under this situation a joint Inspection was made by the District Forest Officer Thoothukudi in Head Works of 20 MGD WSS _ Closed conduit system at Srivaigundam Anaicut on 3.8.17 and a Notice was issued vide C.No/2016/2017 dt 3.08.17. The main content of the notice is as follows.

- I. A letter dt 12.05.17 has been sent to Division office to offer remarks on genuineness of utilization of the area of 0.055 ha allotted for the construction of Head works components for drinking purpose as approved in the G.O but so far no reply has been received .
- II. Total area utilized is 0.08 Ha ,where as the extent of area leased vide G.O Ms. No. 18 Environment and Forest dept dt 7.03.2008 is only 0.055 Ha. Hence you have utilized an extent of 0.025 Ha illegally and unlawfully executed the following work without valid order from the competent authorities.

a)	Compound wall and Passage	- 0.015 ha
b)	Transformer yard	- 0.010 ha
	Total	= 0.025 ha

1. As per G.O it has been very clearly and specifically mentioned as the area 0.055 Ha required has been allotted for drinking purpose only. However during the field inspection on 3.8.17 it is found that the water is being utilized for Industrial purpose which is vitiating the objective of the G.O resulting total violation of the Government order .

5. In this regard it is submitted that

- the said letter dt 12.5.17 from District Forest Officer not been received in this office the same has been informed while acknowledging the receipt of the notice.
- the said violation was happened during execution of project in the year 2008- 2011. On completion and commissioning of the scheme, the execution Division ie Urban Division Thoothukudi has wound up and the related records and files were handed over to RWS division, Thoothukudi for further follow up action regarding this project and hence in the ref-11. the Executive Engineer RWS Dn has been requested to explain the reasons for violations notified by the District Forest officer . The Executive engineer RWS division Thoothukudi on pursuing the related records and informed that there is no correspondence was made with regard to Violations either by TWAD Bd or by Forest Dept during or even on completion of the project. The lease amount has been paid regularly to Forest Dept .On enquiry from those engineers during execution, it was informed that Intake well, Foot Bridge and control Room were the main components of Head works and While commencing execution of Head works in the upstream of Srivaikundam anaicut , the forest authority objected and stop the work stating that, the storage area of Srivaikundam Anaicut falls under Reserve Forest survey No:600 and instructed to get suitable permission

from Forest Department. Accordingly permission proposal in the prescribed format was submitted and necessary permission was obtained. As per permission the components were constructed without deviation. Control Room was constructed near by the River bund and there was a gap in between control room and River Bund .To have path way to control room from bund the sloppy area was filled up with earth and protected from erosion of soil, and it is being used as open path way then while getting power supply from EB as per IE rules transformer yard was erected in the path way as such it was consider as River Poram poke land (RS no.601) and also there is no objection from Forest Dept till violation was notified during joint inspection made by the District Forest Officer on 3.8.17 . Hence said violation is only deviation and the notified deviated area amounts to 0.025 ha. During execution, these area only been protected against erosion of river bund in favor of Forest Dept and also there is no endangered fauna or flora. As per guideline issued by GoI vide 11-9/98-PC dt 21.9.2007, State government can accord general approval for conversion of Forest land to non forest purpose to an extent of 1.0 ha. The total area including deviated area is only 0.088 ha and is well within 1.0 ha and hence the said violated area may please be consider for ratification. In this regard a Proposal already been sent to District forest officer by the District Collector, Thoothukudi vide Ir No 18817/F.20 MGD /JDO/2017/ dated 9.8.2017 as directed by the Hon'ble National green Tribunal.

- While execution of Head works as said earlier ; the forest authority objected and stop the work stating that, the storage area of Srivaikundam Anaicut falls under Reserve Forest survey No:600 and instructed to get suitable permission from Forest Department.

➤ In the District collector letter addressed to the District forest officer Thoothukudi cited in the ref- 2 it has been specifically mentioned that the 20 MGD WSS was sanctioned by the Govt to meet the requirements of water for the industries like Southern Petro chemical industries Corporation, Thoothukudi Alkali Chemicals, Thoothukudi Thermal Power Plant , Dharangadhara Chemical works, SIPCOT, Zirconium and Titanium Sponge project, Heavy Water Plant etc ., further the proposals to draw 20 MGD water from Srivaikundam anaicut through closed conduit system also approved vide G.O M/s No 160 /Rd/Dt 30.7.1998 for Rs 21.93 crores and request to give enter upon permission in SF No 600/(Forest Land) for early execution of the project.

Based on the recommendation of the District Collector, Thoothukudi, the proposal duly countersigned by the District Forest Officer and submitted to the Conservator of the Forest Tirunelveli, in which it has been mentioned that the TWAD Board has submitted a proposal for diversion of land for non forest purpose for construction of certain infrastructure required for supply of water to Industries like Southern Petro Chemical Industries Corporation, Thoothukudi Alkali Chemicals Thoothukudi thermal power plant, Dharangadhara Chemical works , SIPCOT , Zirconium and Titanium Sponge project, heavy water plant etc /. The same proposal was submitted to the Principle chief conservator of Forest by the Conservator of forest with recommendation that, **the proposed reserved land is essential for Providing Water Supply to the Industries and also for Drinking Purpose.**

Accordingly, in the reference 1st letter cited, then Executive Engineer urban Division, Thoothukudi has sent a proposal to District forest Officer, Thoothukudi for seeking permission for construction of intake well , Foot bridge and control room in Reserve Forest Survey No:600 to meet out the water requirement of following industries viz.

- a.) Southern Petrochemical industries corporation(SPIC)
- b.) Thoothukudi Alkali Chemicals (TAC)
- c.) Thoothukudi Thermal Power Station
- d.) Dharangadhara chemical works
- e.) SIPCOT
- f.) Zirconium & Titanium plant and
- g.) Heavy water plant

The proposal was prepared and submitted in the prescribed format as per Forest Conservation Act 1980. In the prescribed format for seeking permission under Forest Conservation Act 1980, in Annexure I " Check List for proposal under Forest (Conservation) act 1980" under SI No: 24 "Information regarding number of benefits of Beneficiary of the project it has been specifically mentioned as **"water supply to industries"**. Further in the Form- A (Form for seeking prior approval under section 2 of the proposals by the state government and other Authorities) Part I (to be filled by the user agency) under SI no.1 , Short narrative of the proposal and project /scheme for which forest land is required it is furnished as " 20 MGD WSS closed conduit system water supply scheme to Thermal power project , SIPCOT Complex, Heavy water plant and other industries in Thoothukudi district for drinking and other purpose"

But, while passing the G.O.Ms No.18 dt7.3.2008 by the Environment and Forest Dept, it was approved for diversion of 0.055 ha. of forest land in Survey No.600 of Srivaikundam Village to TWAD Bd for construction of Intake well along with Control room and Foot Bridge for drinking purpose. Based on the above facts Hon'ble National Green Tribunal has noted in the order dt 7.7.17 that "***it was taking note of all these facts only, the conservator of Forests has given recommendation to the Principal Chief Conservator of Forests who in turn, has given his recommendations to the Government of Tamil Nadu on 20.12.2007. The Government of Tamil Nadu while passing G.O Ms No: 18 E&F (FR 10) department dated 7.3.2008 has not chosen to mention to other purposes like industrial activities and restricted only for drinking purposes alone and it appears that there is a mistake in passing such order***" Further applying the principle of sustainable development, the industries should not allowed to the run out of water, There is another issues viz the employees working in the industries who are residing in the said area are also deprived of water. Therefore, as an interim arrangements, the earlier order dated 31.5.2017 is modified to effect that the situation which was in existence before the interim order dated 31.5.2017. Further directed the user agency in the mean time to approach MoEF & CC for seeking permission.

6. A proposal, for getting ratification & approval for the violations notified by the District Forest Officer has already been submitted to the District Collector Thoothukudi vide letter cited in the - ref 12 and in turn it was sent to the District Forest officer by the District Collector vide ref-13.

7. Considering the following that,

- a. The proposal submitted by then Executive Engineer Urban division Thoothukudi for seeking permission to Construct Intake well, Foot Bridge and Control Room is submitted in the prescribed format furnished by the Forest dept under Forest act 1980 and subsequently in the recommendation made on the proposal by the District Forest officer and Conservator of Forest viz " The Reserved land is essential for providing water supply to Industries and also for drinking purpose"
- b. Taking note of the points in the order passed by the Hon'ble National Green Tribunal south zone dated 7.7.17 that' "while passing G.O Ms No: 18 E&F (FR 10) department dated 7.3.2008 has not chosen to mention to other purposes like industrial activities and restricted only for drinking purposes alone".:
- c. the notified deviated area was executed as pathway and Transformer yard by assuming as Govt Poram poke land (RS no.601) during execution of the project . These area only been protected against erosion of river bund in favor of Forest Dept and also there is no endangered fauna or flora. Further as per guideline issued by GoI vide 11-9/98-PC dt 21.9.2007, State government can accord general approval for conversion of Forest land to non forest purpose to an extent of 1.0 ha. The total area including deviated area is only 0.088 ha and is well within 1.0 ha.

For the said violations by the District Forest Officer, a proposal requesting
(i) To ratify the additional area utilized during execution over and above the sanctioned area in the G.O Ms No.18 of Environment and Forest dept dated 7.03.2008 , (ii) Necessary amendment to the GO Ms No. 18 of Environment and

Forest dept dated 7.03.2008 ie " Drinking purpose" amended as "Industrial purpose as well as drinking purpose" has already been submitted to the District Forest officer vide ref -13 cited.

Hence considering the above facts and the circumstances explained above, the said violations made during execution may kindly recommended for ratification and to grand necessary amendment to the GO Ms No. 18 of Environment and Forest dept dated 7.03.2008. This is submitted for information and favorable order please. Since the matter is pending before the Honourable Green Tribunal south zone, no further action may please be pursued .

Encl:- Copy of letters mentioned as above

[Signature]
Executive Engineer,
TWAD Bd Maintenance Division,
Thoothukudi.

Copy submitted to the

- 1) The managing Director TWAD Bd Chennai
for information of,
- 2) The Law officer TWAD Bd Chennai
for information of.
- 3) The chief Engineer TWAD Bd Chennai
for information of
- 3) The Superintending Engineer TWAD Bd
T.V Circle, Karikal.
for information of

[Signature]
2011
13/5

Sir,
Copy received.
[Signature]
25/11/11
Sgt.

TAMILNADU FOREST DEPARTMENT

From
Thiru. D.Sambath, I.F.S.,
District Forest Officer,
Collectorate Campus,
Thoothukudi Division,
Thoothukudi - 628 101.

To
The Principal Chief Conservator of
Forests (Head of Forest Force),
Chennai - 15.

(Through Chief Conservator of
Forests, Tirunelveli)

C.No. D / 2016 / 2017 dated 10.01.2019

Sir,

Sub : Forests - Illegal supply of drinking water to industries for
Manufacturing purposes in violation of G.O (Ms) No. 18 E&F Dept
dated 07.03.2008 - remarks called for - submitted - reg

Ref : 1. Government letter no. 20575/FR.10/2018-2 dated
29.11.2018
2. Principal Chief Conservator of Forests, Chennai Ref.No.
WR3/52454/2018 dated 27.12.2018

&&&&

I submit that the District Collector, Tuticorin in his letter No. Roc. No. Pa9 /
6801 / 2007 dated 30.10.2007 addressed to the District Forest Officer, Tuticorin to
accord necessary permission for diversion of 0.055 ha of Forest land in survey No.
600 of Srivaikundam village of Tuticorin District infavour of TWAD Board for
construction of Intake well of 10 Mtrs dia at distance of 75 Mtrs from Thamiraparani
river bund, foot bridge over 72.50 Mtrs length from intake well to bund of the river
and control room.

2) S.No 600 of Srivaikundam village of Tuticorin District has been declared
as Reserved land under section 26 of the Tamilnadu Forest Act and hence it would
attract the provisions made under section 2 of the Forest Conservation Act, 1980.
Therefore, the District Forest Officer, Tuticorin in his letter No. D / 7868 / 2007 dated
09.11.2007 had sent the necessary proposal for diversion of above said Forest land

under section 2 of the Forest Conservation Act, 1980 wherein it was specifically mentioned that the land required is for supply of water to industries like Southern Petro Chemicals Industries Corporation, Thoothukudi, Alkali Chemicals, Thoothukudi, Thermal Power Project, Dharangathara Chemicals work, SIPCOT, Zirconium Titanic Sponge plant, Heavy water plant and Port trust etc., providing drinking water (as Part II of the proposal). Accordingly, G.O No.18 E&F dt 07.03.2008 was issued for diversion of 0.055 ha of forest land in S.No. 600 of Srivaigundam Village in Tuticorin District for construction of Intake well along with Control room and foot bridge for drinking water purposes subject to certain conditions.

3) During the field inspection on 03.08.2017, it was found that, the user agency had utilized an excess area of 0.025 Ha (for compound wall and passage (0.015 Ha) and transformer yard (0.01 Ha)). Necessary action has been initiated against the user agency vide this office letter No. D/2016/2017 dated 03.08.2017.

4) The Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Thoothukudi had communicated, in his letter No. 61018 / F – 20 MGD / JDO / 2017 dated 21.11.2017, a copy of his legal advisor letter No. nil dated 22.09.2018 wherein it has been noted as given below :-

“ The above case (128 Of 2017) came up for hearing today (22.09.2017) before the Honorable National Green Tribunal. We produced the copy of the notice issued by the District Forest Officer, Tuticorin dated 03.08.2017 to the Honorable Tribunal. After reading the notice, the Honorable Tribunal observed that when the matter is pending before the Tribunal, the District Forest Officer, Tuticorin is also a party to this proceedings. Without coming to this Tribunal, the notice issued by the

District Forest Officer, Tuticorin is unwanted. Hence the Honorable Tribunal directed to strictly follow the order dated 07.07.2017 by the Tribunal.”

5) Earlier, Application No. 128 of 2017 was filed before the National Green Tribunal (Southern Zone) and the Tribunal had passed an interim stay on 31.05.2017 to strictly act in accordance with G.O.Ms.18 Environment and Forest (FR.10) Department dated 7.3.2008 supplying water only for drinking purpose until further orders of this Tribunal. During the hearing on 07.07.2017, the above said order was modified that the situation which was in existence before the interim order dated 31.5.2017 shall be continued, however, subject to the condition that the Board shall closely scrutinize whatever water is required for industrial purpose and also subject to the condition that sufficient quantity of water is available for drinking purpose for the people.

6) As submission made before the Honorable National Green Tribunal (Southern Zone) Chennai during the hearing held on 07.07.2017, the Executive Engineer, TWAD Board, Maintenance Division Thoothukudi in his letter No. 120618 / 2018 dated 12.06.2018 had submitted a detailed proposal for the above said excess area of 0.025 ha and the same was also sent to the Principal Chief Conservator of Forests (Head of Department) Chennai through the Conservator of Forests, Tirunelveli vide this office letter No. D / 3522 / 2018 dated 30.08.2018. The further details required in Principal Chief Conservator of Forests (Head of Department) Chennai letter No. TS4 / 24793 / 2018 dated 03.12.2018 have also been sent by the 11th respondent in his letter No.D/3522/2018 dated 17.12.2018.

7) The Honorable National Green Tribunal, Principal Bench, New Delhi on the original Application No.128/2017(SZ) has passed the following orders on 28.11.2018:-

“ Considering the admitted facts and the circumstances set out above, we direct the TWAD to forthwith prohibit the use of the water drawn against the forest clearance for 0.055 ha which admittedly has been granted only for the purpose of drinking water making it quite clear that any other order passed by this Tribunal earlier contrary to this shall stand hereby superseded.

We also clarify that by this order, we do not prohibit use of water for drinking purpose by the housing colonies, schools, hospitals, etc. and is only confined to the industrial units.

With the above directions, the application stands allowed.”

8) In the meantime, Thiru S. Joel had sent a representation dated 17.11.2018 stating to take action against the TWAD, Board officials, the District Collector, Tuticorin, District Forest Officer, Tuticorin and other Government Officials for illegal supply of drinking water to industries for manufacturing purposes in violation of G.O. (Ms) No. 18 Environment and Forests Department dated 07.03.2008 for causing Rs. 4,566.88 crores loss to exchequer under the provisions of Prevention of Corruption Act, 1988, Indian Penal Code, the Forest Conservation Act, 1980 and the Environment Protection Act, 1986 and not to consider the proposal made by the TWAD Board, Thoothukudi for diversion of Forest land as stated above for non-forestry purposes.

9) Further he has filed a WP No. 31254 of 2018 with the prayer to constitute a Special Investigation Team to investigate into the illegalities committed by the State Government Officials in the illegal supply of water to industries in violation of provisions mentioned in para No. 3 of G.O.(Ms) No. 18 Environment and Forests Department dated 07.03.2008 based on the petitioner's representation dated 17.11.2018 within a stipulated time. A detailed counter affidavit has already been sent

to the Additional Government Pleader (Forests) Madras High Court, Chennai vide this office letter No. D/2016/17, dt 24.12.2018. The case is still pending.

10) It is stated that the supply of water to industries is not made by the Forest Department. As far as Forest Department is concerned, ^{0.055}~~0.55~~ ha of Reserved Forests was diverted to the TWAD, Thoothukudi. But it had utilized an excess area of ^{0.025}~~0.25~~ ha for which a proposal as discussed above has also been sent to the Principal Chief Conservator of Forests, Chennai. The role of the Forest Department is limited only to the allotment of the forest area to the TWAD, Thoothukudi as per their request. At the same time, the Forest Department is not made any arrangement for supply of water to the industries. As it is related with the TWAD, Thoothukudi, Forest Department does not play the role for distribution of the water to industries. Moreover it does not fall within the domain of the Forest Department. Further, the TWAD, user agency in this case has to look into the matter of distribution of water for drinking water instead of industries. Therefore, it is not the responsibility of Forest department for the cost of water and other consequence for supply of water to the industries under any circumstances. As Writ Petition No. 31254 of 2018 has also filed by Thiru S. Joel for the same allegation made by him as causing loss of Rs. 4,566.88 crores loss to exchequer in continuity of his representation dated 17.11.2018, it is suggested that no further action is needed now on his representation dated 17.11.2018 at this stage. Otherwise, it will become prejudice to the pending WP No 31254 of 2018.

11) ~~In view of the above said reasons and circumstance as explained above, it is requested to drop further action in this matter.~~

This is for your kind information of the peer.

Yours faithfully,

[Signature]
District Forest Officer,
Thoothukudi.

[Signature]
11.11.19
11.11.19
Copy submitted to the Chief Conservator of Forests, Tirunelveli Circle,
Tirunelveli

① In the mean time Judgement was issued
on 28.11.18 by the Honorable National
Green Tribunal Principal Bench New Delhi,
~~the~~ ^{Commission} in this, a notice has been
issued to the TWA Urban Division
Tukerri by this office, ^{in 1.9.12.18} to ensure the
water pumped from the intake well
is solely utilised for the
w. bonded purpose i.e. drinking
purpose only. For that ~~they~~ the
EE TWA maintenance Division
Tukerri replied that the water
pumped from intake well is supplied
for drinking purpose alone from 1.12.18
as per the Judgement of Hon. C. S,
Principal Bench New Delhi.