



The Tamil Nadu Dr. Ambedkar Law University

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MOOT COURT ASSOCIATION,  
SCHOOL OF EXCELLENCE IN LAW



# 18TH PRO BONO ENVIRO NATIONAL MOOT COURT COMPETITION

(MOOT PROPOSITION)

27<sup>TH</sup> – 29<sup>TH</sup> SEPTEMBER 2024 &

19<sup>TH</sup> OCTOBER 2024





## **MOOT PROPOSITION**

The Union of Dada is a peninsula rich in natural resources and a fragile and sensitive ecology. The country celebrating its 78th year of Independence is also a fast-growing economy promoting local business with a goal of self-reliability. The Union of Dada with a view to balance the protection of Environment and also sustain its developmental needs have enacted many laws, rules, regulations, notifications etc.,

The State of Thala Nadu is the southernmost state in the Union of Dada and has unique regional culture, language and practices. Since the 1980s, Thala Nadu has had shift in political ideology with regionalism driving its policies. The State also has many protected Eco-Sensitive Areas, Eco-Sensitive Zones, Critically Vulnerable Coastal Area and many mountains and reserve forest areas.

River Dravida is an eastern flowing perennial river originating in Congu, the western most district of the State running all the way to the Sachin Bay in the east. The entire western region districts are heavily dependent on Dravida for agriculture and farming.

During the late 1980s and early 1990s with a shift in political atmosphere, the State Government was heavily invested upon promoting local industries and business. There was lot of governmental concessions, financial support, land allocations and free power schemes to local industries and business houses. Thala Nadu was promoting local talent and investments.

In that background, on 15.11.1989, one Mr. Ashwin inaugurated a huge textile industry in about 40 Hectares of land in Congu District comprising of separate Dyeing, Bleaching, Weaving & Knitting unit. The industry was incorporated as a private company in the name of "Congu Special Knitts" or "CSK." The industry was located at 619 metres from the River Dravida.

CSK was promoted by Thala Nadu by fast track of clearances as and when applied by the industry. There was also grant of loan to the extent of 100 Crores and partial free electricity supply. CSK soon flourished and triggered a growth of many such dyeing and textile-oriented units all around the western region. In a span of about 10 to 15 years, the Congu region became a dyeing and textile hub with hundreds of units of small, medium and large categories. The same generated massive employment. Mr. Ashwin was hailed as a regional hero who took the image of Thala Nadu to the rest of the country. The economy of the State boomed.

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However, since the maximum of these units were located close to the River Dravida, there were growing complaints among the agriculturalists that there was rampant pollution caused to the river by letting of dyeing and other effluents by the units. CSK was targeted as the single largest contributor to the pollution.

In 2007, the protests escalated and the agriculturalists formed an association registered as "Makkal Sarntha Dharmam" or "MSD" to fight against the pollution caused by the units. The association held protests, agitations, campaigns and took it up as a social, political and electoral issue with the Government.

This resulted in joint department inspections of CSK and its waste treatment systems along with inspections of hundreds of other industries. The inspections concluded that advanced effluent treatment systems were necessary to be installed by these units and recommended the same to the Government. Importantly, water sample analysis of the River Dravida near the units including CSK proved that the River had been contaminated and did not meet any of the category of standards as per the norms of the Central Pollution Control Board.

The acceptance of the inspection reports and its recommendations prompted the State to issue government order in G.O. No. 378 of 2007 dated 24.09.2007 where by the setting up of any new dyeing, bleaching or textile unit was prohibited within a distance of 1 KM from the River Dravida. The order also recommended the existing units to shift to latest effluent treatment systems with additional treatment process to achieve a Zero Liquid Discharge (ZLD) and to not let out any treated or untreated sewage or trade effluent outside the premises of the units, at the earliest.

CSK and other hundreds of units represented to the government that it would be a tedious task and to grant a minimum time of two years to implement the systems. However, MSD complained that this will not bring any solution since no formidable action was taken against the units that are already polluting. They represented that the units will have to be shifted away from the River as implementing the ZLD system or monitoring of the same cannot be fool proof and the units will continue to pollute the river depriving the life and livelihood of agriculturalists

With no further action forthcoming from the Government, MSD filed a Public Interest Litigation in W.P.No. 18 of 2008 praying for action to be taken against the polluting industries. The petition also specifically made CSK as a party respondent as the single largest contributor to the pollution.



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The Hon'ble High Court of Thala Nadu by a final order dated 02.04.2011 by a special sitting gave a finding that the reading of G.O.No 378 itself would show the need for the industries to install effluent treatment systems and the water analysis results in the river near the units proved contamination. Therefore, the Hon'ble High Court gave a finding that the units were polluting the river and held that the units have not proved anything in the negative. Thus, the High Court ordered an immediate closure of all the units including CSK till they implement the ZLD systems in their unit. The order also directed the State Departments to take any other action as may be warranted by law against the units. The High Court further directed that the units may be allowed to operate again only after they report compliance to the ZLD technology and make necessary applications for permissions which can be considered by the concerned departments as per law. With respect to the compensation to be paid to the affected farmers and fixing individual liabilities on the various units, the High Court gave liberty to MSD to approach the National Green Tribunal as it required individual adjudication.

The High Court order attracted public attention and the Government was blamed widely in media and press for their inaction for a long period. Mr. Ashwin and the management of CSK issued statements against the ban from operating the unit and that they were targeted by motivated persons and denied that they caused pollution. The statement read that they decided to accept the order and they would install ZLD at the earliest.

On the other hand, MSD issued statement that they would seek compensation from the NGT and they would continue to fight against the re-opening of the units by highlighting complete failure of governmental machinery which has resulted in pollution of a major river in the State. The Government also made a statement that they would strictly take action against the units and they were committed to the protection of Environment.

After a period of about two years, in 2013, CSK held a private function in which it announced that ZLD systems were installed and that CSK was making a comeback after 2 years. The function impressed upon the revival which benefits all of its employees and carried the advertisement that the re-opening of CSK would pave way for all the other such industries in the region. On 23.06.2013, CSK recommenced its operations by claiming that its licenses were valid on the date and therefore complied with the orders of the High Court.

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However, shortly thereafter, the Thala Nadu Pollution Control Board (TNPCB) issued a show cause notice to the CSK. The notice stated that the CSK did not obtain a Consent to Establish during 1989 and also did not obtain Consent to Operate when it started operations. The notice alleged the operations till 2011 as illegal. The notice also stated that even presently there is no Consent granted for operating the unit. The notice also alleged that it was held by the High Court that the unit had polluted the River Dravida. More importantly, the notice cited G.O. No. 378 of 2007 as a prohibition of the operation of the unit as it has not obtained the Consent of the TNPCB. It was further alleged that the unit had thus violated provisions of the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981 and why action for permanent Closure of the unit apart from Criminal prosecutions must not be initiated against the unit and Mr. Ashwin and gave a time period of 15 days for the unit to reply.

CSK made a reply to the notice denying all allegations as motivated act of Department instigated by private rivals and other parties acting against the development of the State. It was further replied that they had obtained various other permissions of the State including trade licence, building approvals, registration certificates, tax assessments, electricity payments, water service connections, etc., and that Consent from the TNPCB was not insisted during the time of setting up of the unit. It further replied that it is a well reputed industry which played a vital role for the development of the State and a permanent closure was against the principles of sustainable development. It further denied any violations of the Water and Air Act and for any prosecution proceedings. Thereply specifically denied the application of G.O.No 378 of 2007 to the unit as it was already an existing unit and thus does not attract the ban as per the Government Order. The unit along with the reply also applied for Consent order from the TNPCB and made payment of arrear of fees with penalty from the year 1989.

The application for Consent to Operate made by CSK under both the Water and Air (P &CP) Acts were rejected by the TNPCB by order dated 01.01.2014 citing the same reasons as in the show cause notice and holding the reply of the unit as not satisfactory. The rejection order held the unit was considered to be a "new unit" as its existence was illegal prior to 2011 for having not obtained any Consent of the TNPCB and thus was prohibited from operating the unit as per G.O.No.378 of 2007. Consequently, since the unit re-commenced operations without permissions during 2013, the TNPCB also made common order dated 02.01.2014 under Section 33-A of the Water (P&CP) Act and Section 31-A of the Air (P&CP) Act and issued directions for permanent closure of CSK.



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The order also directed disconnection of power supply to the unit and a further direction to the District Collector for lock and seal of the premises of the unit.

CSK filed an appeal against the rejection of Consent order dated 01.01.2014 before the Hon'ble Appellate Authority for TNPCB in Appeal No 44 and 45 of 2014.

CSK further filed a Writ Petition challenging the permanent closure order dated 02.01.2014 which was dismissed in limine leaving open the right of CSK to contest the appeal against the order of rejection of Consent and seek any remedy if available, in those proceedings. The High Court further directed the district authorities to immediately effect closure and sealing of the unit. Thus, the CSK unit came to be closed and under lock and seal.

In the meantime, MSD filed an application before the NGT (Southern Zone) in O.A.No. 5 of 2014 praying for compensation to be paid to the affected agriculturalists and a remediation of the damages caused to the River Dravida and made CSK as a respondent party to the proceedings. The NGT (SZ) ordered for formation of a Joint Committee comprising of experts from Central Pollution Control Board, Thala Nadu Pollution Control Board, the NEERI institute, the University of Agriculture, Department of Irrigation and the District Collector of Congu. The NGT appointed Justice Laxman, a retired Judge of the High Court as the Chairman of the Committee and directed for a report on the damage caused to the River and remediation plan apart from assessing environmental compensation to be levied against the erring units.

Justice Laxman committee filed an interim report and requested for two years' time to conduct a thorough study and to assess the damage since the units have been polluting for many decades and to come up with a remediation plan. The same was approved by the NGT(SZ) and the case was adjourned sine die awaiting the final report of the Laxman Committee.

Thereafter, the Hon'ble Appellate Authority for TNPCB by order dated 08.09.2016 dismissed the Appeal No 44 and 45 of 2014 filed by CSK by confirming the reasons stated in the Consent rejection order of the TNPCB.

CSK filed a further appeal against the dismissal order of the Appellate Authority before the NGT (SZ) in Appeal No 13 and 31 of 2016. CSK prayed for interim resumption of the unit as any further continuation of closure would make the industry dead and also pointed out that majority of hundreds of other units also had the same fate as CSK and they had all been closed and sealed by the authorities.

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CSK argued that it would destroy the entire industrial sector and agreed to comply with any conditions that may be imposed for a temporary resumption of the unit. The NGT(SZ) impleaded on suo-motto the MSD in the appeals as the affected parties by the pollution caused by the units and sought response from them and also the TNPCB and the State of Thala Nadu.

The litigation had been adjourned for seeking response from the various departments of the State including the Department of Industries and Department of Environment. The MSD also filed detailed pleadings.

Thereafter, during 2018, the Justice Laxman Committee furnished a further report stating that it required another extension of 15 months for filing of final report and that they had identified methods of remediation of the River.

Thereafter the NGT(SZ) listed the O.A.No. 5 of 2014 and the Appeal No 13 and 31 of 2016 on the basis of the additional report of the Justice Laxman Committee. CSK argued that it would abide by any methods of remediation that would be suggested by the final report of the Committee and that an interim resumption of operations alone would survive the entire industry in the region. MSD strongly objected the plea and stated that any resumption would only lead to further pollution and that CSK or any of the other units did not have any legal right to resume any interim operations in the absence of a Consent order.

However, considering the overall circumstances and the responses of the various departments and the report of the Laxman Committee, the NGT (SZ) by common order dated 27.05.2018 allowed CSK to resume operations but only operate at 25% of its capacity as an interim measure. CSK rejoiced a return once again in 2018. The NGT (SZ) adjourned the case for final hearing after the filing of final report by the Laxman Committee. Following the order a number of other units filed applications and sought similar orders to operate at 25% capacity before the NGT (SZ) and were permitted in individual cases.

Finally in the year 2020, the Justice Laxman Committee returned a final report with alarming findings. The committee had concluded that the pollution in river was noticed till about 150 Kms downstream and had direct impact in ground water quality and irrigation sources. The Committee had estimated a sum of Rs.500 crores to be required for several techniques to restore the river completely. Apart from the same, the Committee applied the CPCB formula for calculation of Environmental Compensation laid down by the NGT in similar cases and calculated a sum of Rs. 100 crores to be paid for illegal operation without Consent from 1989 till 2011. However, the hearing of the case could not take place due to the pandemic.



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In the meantime, the TNPCB, on the basis of the Laxman Committee report made an order under Section 5 of the Environmental Protection Act, 1986 directing CSK to make a payment of Rs. 100 crores as Environmental Compensation for operation of the unit illegally without valid Consent of the TNPCB from 1989 onwards subject to additional compensation that may be fixed by the NGT (SZ) in O.A. No. 5 of 2014.

The order was challenged by CSK in an appeal before the NGT in Appeal No 6 of 2020 which was tagged along with the pending batch of cases on the basis that levy of Environmental Compensation for operations without Consent has no legal basis and that only a penalty as per the Act could be levied. It was further contended that the CPCB formula cannot be relied upon by the State Pollution Control Boards in all cases to levy Environmental Compensation in the absence of a statutory provision.

The TNPCB also further proceeded to file a criminal complaint against Mr. Ashwin and CSK under Section 200 of the Cr.P.C. for offence under Section 15 and 19 of the Environment Protection Act. CSK filed a petition under Section 482 of the Cr.P.C. seeking to quash the criminal proceedings on the ground that the legality of operation of the unit was pending before the Hon'ble NGT (SZ) and accordingly obtained an interim stay of the criminal proceeding by an order of the Hon'ble High Court.

Thereafter, the NGT (SZ) listed all the batch of cases together and passed a final order dated 05.09.2023 in O.A.No 5 of 2014, Appeal No 13 and 31 of 2016 and Appeal No 6 of 2020 as follows :-

(i) The impugned order of rejection of Consent passed by the TNPCB and the order of the Appellate Authority is proper and correct and thus Appeal No 13 and 31 of 2016 are dismissed. The word "existing" units can only mean and include the units that are legally existing with all valid and required permissions including the Consent of the TNPCB. If any unit has not obtained the same, it cannot be considered as an "existing" unit and when subsequently applying for Consent, the unit has to be assessed as per existing norms and siting criteria and prohibition criteria.

Therefore G.O. No. 378 of 2007 is applicable to the unit of CSK and it cannot be granted Consent to Operate as it is situated at 619 meters from the River Dravida well within the prohibited distance of 1 K.M. The interim relief of operation of the unit at 25% capacity is withdrawn and the unit is directed to be under permanent closure at the existing site and the District authorities are directed to effect the same.

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(ii) The order of the TNPCB imposing Environmental Compensation on the basis of the Justice Laxman Committee against CSK for operations without obtaining Consent from the year 1989 to 2011 is proper and legal and the Appeal No 06 of 2020 is dismissed. The unit of CSK is party to the proceedings in connected matter and thus the plea of hearing of objections by the TNPCB before passing of the order is only hyper technical as there are no other reasons stated for not obtaining Consent to Establish or Operate the unit from 1989. The CPCB formula for assessment of Environmental Compensation for industries for illegal operations without obtaining Consent as approved by the NGT in earlier cases is accepted.

(iii) The final report of the Laxman Committee is accepted and the objections of CSK are rejected as baseless. The applicants in O.A.No 5 of 2014 are found entitled to compensation for damage of environment and impact in livelihood due to the operation of CSK illegally and entitled to receive sum as per the table in the Laxman Committee report. Further the O.A. No. 5 of 2014 is allowed by directing the CSK to make payment of Rs. 500 crores under the polluter pays principle in addition to findings in (ii) above and the compensation to the applicants in O.A.No. 5 of 2014 as per the Laxman Committee report for having caused pollution in River Dravida as the single largest industry. Even though there are other units that may be operating, they may be individually imposed further penalty and the entire sum of Rs. 500 crores are directed to be paid by the unit of CSK.

The unit of CSK filed appeal against the orders of the NGT (SZ) before the Hon'ble Supreme Court in Appeal Nos 1, 2, 3 and 4 of 2024 against order in O.A.No 5 of 2014, Appeal No 13 and 31 of 2016 and Appeal No 6 of 2020 respectively.

In the meantime, the Hon'ble High Court of Thala Nadu also dismissed the criminal original petition filed by the CSK challenging the criminal proceedings initiated by the TNPCB. The Hon'ble High Court directed the unit of CSK to participate in the trial proceedings and seek appropriate relief including the plea of the CSK that the offences are decriminalized now as per the Jan Vishwas (Amendment of Provisions) Act 2023 which have come into effect in the State of Thala Nadu.

Aggrieved by the order of the High Court, the unit of CSK filed an appeal in Appeal No 5 of 2024 against the same before the Hon'ble Supreme Court which has batched the case along with the other connected appeals.

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in the meantime, CSK also filed a Writ Petition under Article 32 of the Constitution of India numbered as W.P.No. 07 of 2024 praying to set-aside the G.O.No.378 of 2007 as unreasonable and violative of right to trade and business. The State of Thala Nadu & TNPCB and MSD filed replies stating that there is no vested right to trade or business "at a particular site" and that it is also a reasonable restriction and justified the order. This has also been batched with the cases pending.

The pleadings are complete before the Hon'ble Supreme Court and the cases are listed for final hearing on the questions of law framed as follows:-

**(i) Whether the word "existing" unit will mean and include the units that are legally existing with all valid and required permissions including the Consent of the TNPCB and whether if any unit has not obtained the same, it can't be considered as an "existing" unit when it obtained other governmental permissions and when subsequently applying for Consent, the unit has to be assessed as per existing norms and siting criteria and prohibition criteria?**

**&**

**Whether the G.O. No.378 of 2007 is valid and whether there is vested right to trade and business at a "particular site" ?**

**(ii) Whether order of the TNPCB imposing Environmental Compensation under Section 5 of the Environment Protection Act is correct or whether only penalty as per the Act can be levied for operations without obtaining Consent order and whether the CPCB formula can be adopted in all cases of industrial pollution in the absence of statutory provisions?**

**(iii) Whether the polluter pays principle can be invoked by the NGT to arrive at liability against the unit of CSK alone when there may be other contributory factors?**

**(iv) Whether the criminal prosecution under Section 19 r/w Section 15 of the Environmental Protection Act is maintainable after the coming into effect of the Jan Vishwas Act and whether making a complaint under Section 200 Cr.P.C amounts to taking cognizance of the offence?**



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### **NOTE TO THE MOOTERS:**

**This proposition is drafted by Adv S. Sai Sathya Jith, Standing Counsel for the Tamil Nadu Pollution Control Board. Participants are not allowed to contact the problem drafter directly/indirectly for any clarifications/queries.**

**The Constitution and all other laws of Dada should be interpreted in pari materia with the Constitution and other laws of India and no such fact is pari materia to any country.**

**The events and the characters depicted in the moot court problem are purely a work of fiction and hypothetical. Any similarity to actual persons living or dead is purely coincidental.**