



W.P.(MD) No.27958 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

CORAM:

**THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.P(MD)Nos.27958 & 26531 of 2023
and
W.M.P(MD)Nos.23928, 22812 & 24075 of 2023**

W.P(MD)No.27958 of 2023:

S.P.Muthu Raman

... Petitioner

Vs.

1.The Director
Directorate of Town and Country Planning,
CMDA Campus,
E and C Market Road,
Koyambedu,
Chennai - 600 107.

2.The Deputy Director
Department Town and Country Planning,
South Bypass Road,
Xavier Colony,
Tirunelveli - 627 005.



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3.TP Solar Limited,
C/o. the TATA Power Company Ltd.,
Corporate Center, A Block,
No. 34, Sant Tukaram Road,
Carnac Bunder,
Mumbai,
Having its Present Unit is at,
Gangaikondan Village,
Gangaikondan Post,
Tirunelveli District – 627 352.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents No.1 and 2 to take appropriate action as against the third respondent for having continued with his construction of building towards establishing 4GW Cell and Module Manufacturing Industry at Plot No.0A-104-105 etc., Gangaikondan Village, Tirunelveli Taluk, Tirunelveli District, without obtaining building plan permission as mandated in sections 48 and 49 of The Tamil Nadu Town and Country Planning Act, 1971 on the strength of the petitioner's representation dated 11.11.2023.

For Petitioner : Mr.R.Anand

For Respondents : Mr.P.Thilak Kumar – for R1 &
R2

Government Pleader



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Mr.Sathish Parasaran
Senior Counsel
assisted by
Mr.Shri Venkatesh – for R3

W.P(MD)No.26531 of 2023:

S.P.Muthu Raman

... Petitioner

Vs.

- 1.The Secretary
Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhawan,
Jorbagh Road,
Aliganj, New Delhi - 110 003.
- 2.The Member Secretary
State Level Environment Impact Assessment Authority
Tamil Nadu,
3rd Floor, Panagal Maaligai,
No.1, Jeenis Road,
Saidapet,
Chennai - 600 015.
- 3.The Member Secretary
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032.
- 4.The District Environmental Engineer,



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Tamil Nadu Pollution Control Board,
Pettai,
Tirunelveli District - 627 010.



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5.TP Solar Limited,
C/o. the TATA Power Company Ltd.,
Corporate Center, A Block,
No. 34, Sant Tukaram Road,
Carnac Bunder,
Mumbai,
Having its Present Unit is at,
Gangaikondan Village,
Gangaikondan Post,
Tirunelveli District – 627 352.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the proceedings of the third respondent dated 29.08.2022 as well as 09.08.2023 with regard to the grant of consent of establish vide Consent Orders No. 2201246833596 and Revised Consent Order No. 2302253605738 in favor of the fifth respondent for establishing 4GW Cell and Module Manufacturing Industry at Plot No.A-104-105 etc., Gangaikondan Village, Tirunelveli Taluk, Tirunelveli District and quash the same and consequently direct the third and fourth



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respondent to ensure that all the mandatory procedures set out in the EIA Notification dated 14.09.2006 do have the compliance on the part of the fifth respondent for establishing their such industry.

For Petitioner : Mr.R.Anand

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by Mr.K.Govindarajan
Deputy Solicitor General – for R1
Mr.N.Dilip Kumar – for R2
Standing Counsel
M/s.M.Sudha Rani
for Mrs.S.Vijayakumari Natarajan
Standing Counsel – for R3 & R4
Mr.C.S.Vaidyanathan
Senior Counsel
for Mr.S.Parthasarathy – for R5
Mr.R.Viduthalai



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Senior Counsel
for Mr.M.Gangatharan
Standing Counsel for SIPCOT
for proposed respondent



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COMMON ORDER

**[Order of the Court was made by
The Hon'ble The CHIEF JUSTICE]**

W.P.(MD) No.26531 of 2023 is filed challenging the order (consent to operate and revised consent to operate) issued by the respondent Nos.3 and 4 in favour of the respondent No.5. It further seeks direction against respondents 3 and 4 to ensure that all mandatory procedures set out in EIA Notification dated 14.09.2006 are complied with by the respondent No.5.

2. W.P.(MD) No.27958 of 2023 is filed seeking direction against respondent No.3 from continuing with the construction activity in absence of valid building plan permission.

3. The learned Advocate for the petitioner strenuously contends that the respondent T.P.Solar Limited is carrying out huge construction admeasuring 2,84,000 sq. mtrs. for the purpose of manufacturing solar cells and modules without obtaining environmental clearance. During the process of manufacturing



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WEB COPY solar cells and modules, large chemicals and effluents would be discharged and proceeding with the activity of manufacturing without getting environmental clearance is detrimental to the health of the villagers residing in the nearby vicinity. The same is also directly in conflict with EIA Notification dated 14.09.2006. The learned Advocate further submits that said TP Solar Limited has not obtained building permission as required under the Town and Country Planning Act, 1971. Illegal and unauthorized constructions are carried out. The same also deserves to be stopped.

4. The learned Additional Solicitor General contends that M/s.T.P.Solar Limited is duty bound to obtain environmental clearance as its activity would be within the ambit and purview of item 8(b) of the Schedule to EIA Notification 2006. The construction is more than 1,50,000 sq. mtrs. Item 8(b) of EIA Notification 2006 is attracted as amended under notification dated 22.12.2014. The Office Memorandum dated 04.10.2022 also clarifies the same. The clarification relates back to the date of Notification, as the same is not an amendment but only clarifies the provisions as it exists.



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5. The learned Senior Advocate for the respondent No.3 M/s.T.P.Solar Limited submits that items 8(a) and 8(b) of the EIA Notification 2006 and the EIA amended Notification 2014, read as it is, without subtracting or adding anything, it is clear that no environmental clearance is required for the project of the respondent. The industrial shed of the respondent Unit cannot be brought within the ambit and purview of item 8(b) inasmuch as the project of the respondent cannot be categorised as a township or area development project. The learned Senior Advocate relies upon the judgment of the Apex Court in a case of *Anand Aria v. Union of India* reported in **(2011) 1 SCC 744**. According to the learned Senior Advocate, the reliance on the office memorandum of the year 2022 would be of no avail to the respondent No.1/Directorate of Town and Country Planning. Office Memorandum cannot override the Statutory Notification. To buttress his submission, the learned counsel for the petitioner relies on a judgment of the Apex Court in the case of *Dr.Y.Ibehaibi Devi (Dead) by legal representatives v. State of Manipur* reported in **(2022) 13 SCC 157**.



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6. The learned Senior Advocate for the SIPCOT, who has filed impleading application in WMP(MD)No.SR87718 of 2023, submits that the activity of the respondent M/s.TP Solar Limited would not require environmental clearance. It is a shed, carrying out the activity of manufacturing and assembling of solar cells and modules. The activity of TP Solar Limited would not come within the purview of any of the items of the EIA Notification 2006 or the amended Notification 2014.

7. Mr.K.Sathish Parasaran, learned Senior Advocate for M/s.T.P.Solar Limited in W.P.(MD) No.27958/2023, submits that an application has been filed for construction permission on 24th July, 2023. Letter has been issued by the Joint Director, District Town and Country Planning Office, Tirunelveli dated 27.11.2023 to the effect that the proposal submitted by M/s.T.P.Solar Limited in SWP/BPA/011793/2023 is under process and since there is no violation, the industrial building is under consideration for approval. He further relies upon the Tamil Nadu Business Facilitation Act, 2018, more particularly, Section 12(2) read with Annexure II to submit that if a decision is not taken within 66 days, then the same would tantamount to be a deemed permission. According to the learned



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Senior Advocate, no violations were reported within 66 days nor any clarification was sought by the District Town and Country Planning office within the period of 66 days, as such, the respondent is entitled for the benefit of Section 12(2) of the Tamil Nadu Business Facilitation Act, 2018.

8. We have considered the submissions canvassed by the learned Advocates for the respective parties.

9. The main thrust of the petitioner is that the project of the respondent M/s.TP Solar Limited is a project of high magnitude and the same should not proceed without environmental clearance. The EIA Notification 2006 dated 14.09.2006 would be relevant. Various categories of the activities are specified in the said notification mandating environmental clearance. The construction activity of the respondent is an industrial shed for the purpose of manufacturing and assembling of solar cells and modules. Manufacturing/fabrication activity is dealt with in item No.5 of the EIA Notification 2006. As far as the manufacturing activities as specified in items 5(a) to 5(k) are concerned, the same deals with chemical fertilizers, pesticides industry, petro chemical complexes, manmade



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fibers manufacturing, petrochemical based processing, synthetic organic chemicals industry, distilleries, integrated paint industry, pulp and paper industry, sugar industry and induction/are furnaces. In Item No.2, primary processing units are specified. It is not the case of the petitioner nor the respondent No.1 that the activity of the petitioner would be included within item 1 to 7 of Notification 2006. The case is based on item No.8 of EIA Notification 2006 and amended EIA Notification 2014. Item 8(b) covers Township and Area Development Projects that is covering the area less than 50 ha and more than 1,50,000 sq. mtrs. The project of the respondent cannot be categorised as Township and Area Development Project.

10. The similar issue came up for consideration before the Apex Court in a case of *Anand Arya and another v. Union of India (supra)*. The Apex Court observed that a project, which is by its nature and character an “area development project” would not become a “building and construction project” simply because it falls short of the threshold mark under item 8(b) but comes within the area specified in item 8(a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes, but in the difference in the nature and



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character of the projects enumerated therein. The Apex Court also observed that the dominant purpose or dominant nature of the project or the common parlance test are to be applied, while considering whether the project in question can only be categorized under 8(b) of the schedule as a township or area development project.

11. Undisputedly, the project of the respondent M/s.TP Solar Limited is a construction of an industrial shed for the purpose of manufacturing and assembling of solar cells and modules. The said industry has obtained consent to operate from the Pollution Control Board. The permission is placed on record. The EIA Notification 2006 and as amended in 2014 is certainly ambiguous. The items 8(a) and 8(b) cannot be reconciled nor it cannot be emphatically concluded that the construction activity of the respondent would be within the realm of either item 8(a) or item 8(b). Nevertheless, a building and construction project below 1,50,000 sq. mtrs would require an environmental clearance certificate and a project above 1,50,000 sq. mtrs. would not require environmental clearance certificate. Such an interpretation would be anomalous. The notification to that extent appears to be ambivalent.



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12. The object and intent of obtaining environmental clearance is that the project which is sought to be constructed has complied with all the requirements and is environmental compliant. The construction activity no doubt is of a huge magnitude ie, the industrial shed is constructed of 2,84,000 sq. mtrs. It is a huge project. In such cases, it is also desirable that the unit obtains environmental clearance certificate.

13. Considering the anomalous notification, we also cannot blame the respondent Unit for proceeding with its construction activity. If the Notification 2006 is literally considered the answer may be that the respondent project may not require environmental clearance. However, such a strict and narrow interpretation would lead to defeating the very purpose of EIA Notification 2006.

14. The respondent Unit has proceeded further in the matter. As we have observed above, the respondent unit cannot be faulted in proceeding further and not obtaining environmental clearance earlier because of the ambivalent EIA Notification 2006 and amended Notification 2014. Further the respondent No.1 has added to the confusion by issuing Office Memorandum clarifying the



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Notifications. Office Memorandum of 2015 is tried to be superseded by Office Memorandum of 2022. It is trite that Office Memorandums cannot override the statutory notifications. The statutory Notifications have to be read as they are. They are to be interpreted. The Office Memorandum cannot supplant the Statutory Notifications.

15. The other objection is with regard to the construction permission of the respondent, it appears that the respondent M/s.T.P.Solar Limited now applied for construction permission on 24th July, 2023 along with all the plans. The same is under consideration with the District Town and Country Planning Office, Tirunelveli. It has issued a letter dated 27.11.2023 that the proposal submitted by M/s.T.P.Solar Limited is under process. The said letter goes on to state that there is no violation of an industrial building, the construction and approval. Reliance is also placed on a deemed permission under Section 12(2) of the Tamil Nadu Business Facilitation Act, 2018. We need not enter into the same, in view of the letter issued by the Joint Director, District Town and Country Planning Office, Tirunelveli, dated 27.11.2023. The District Town and Country Planning office shall take a final decision on the application on the proposal of M/s.T.P.Solar



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Limited for the construction of the industrial building of T.P.Solar Limited within two weeks from the date of receipt of a copy of this order.

16. M/s.T.P.Solar Limited shall within one week from today apply to the State Level Environmental Assessment Authority for environmental clearance and the said State Level Environmental Assessment Authority shall take a decision on the application of the respondent M/s.T.P.Solar Limited for environmental clearance within four weeks from the date of receipt of the application.

17. The parties may take further steps in tune with the decision that would be taken by the State Environmental Assessment Authority and the District Town and Country Planning Authority.

18. These writ petitions stand disposed of with the above observations. However, there shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

[S.V.G., CJ.]

[K.K.R.K, J.]

28.11.2023

NCC : Yes / No
Index : Yes / No
RR



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To

- 1.The Director
Directorate of Town and Country Planning,
CMDA Campus,
E and C Market Road,
Koyambedu,
Chennai - 600 107.
- 2.The Deputy Director
Department Town and Country Planning,
South Bypass Road,
Xavier Colony,
Tirunelveli - 627 005.
- 3.The



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THE HONOURABLE CHIEF JUSTICE
and
K.K. RAMAKRISHNAN, J.

RR

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28.11.2023