

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.09.2015

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE  
and  
The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.3514 of 2015

Dr.D.A.Prabakar

... Petitioner

Versus

1.The Secretary  
Ministry of Environment, Forest & C.C  
Government of India,  
Indira Parayavarn Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi 110 003.

2.The District Environmental Officer  
Tamil Nadu Pollution Control Board,  
SIDCO Industrial Estate,  
Pettai, Tirunelveli District 627 010.

3.The Chirman  
Tamil Nadu Pollution Control Board  
Guindy, Chennai.

4.The Member Secretary  
Tamil Nadu Pollution Control Board  
Guindy, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus, calling for records relating to the impugned notification Number OM No.J-11013/36/2014/IA-I dated 10<sup>th</sup> December, 2014 by the 1<sup>st</sup> respondent and quash the same as illegal and to direct the 2<sup>nd</sup>, 3<sup>rd</sup> an 4<sup>th</sup> respondents to arrange for public consultation which is termed as a constitutional opportunity to the public who are living in and around government notified industrial parks, where RED category industries are being located, prior to 14.09.2006, before issuing further consent for operation.

For Petitioner ::: Mr.A.Ansar

For Respondents ::: Mr.G.Rajagopalan  
Additional Solicitor General  
assisted by  
Mr.Venkatasamy Babu  
SPCGO for R.1  
Ms.H.Yasmeen Ali  
for R.2 to R.4

O R D E R

(The Order of the Court was made by The Hon'ble the Chief Justice)

The petitioner seeks quashing of the notification dated 10.12.2014 which reads as under:

No.J-11013/36/2014-IA-I

Government of India  
Ministry of Environment, Forests and Climate Change  
IA Division

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Indira Paryavaran Bhawan,  
Jor Bagh Road, Aliganj  
New Delhi - 110 003.

Dated the 10<sup>th</sup> December, 2014

OFFICE MEMORANDUM

Subject: Exemption from public consultation for the projects/activities located within the Industrial Estates/Parks.

Reference this Ministry's earlier Office Memorandum of even number dated 16.05.2014 on the subject mentioned above.

2. This Ministry has received representations from various Industrial Associations on the above said Office Memorandum. These representations have been considered by the Ministry. Based on the consideration, the undersigned has been directed to clarify that the exemption from public consultation, as provided for under para 7(i) III.Stage (3)(i)(b) of EIA Notification, 2006 is available to the projects or activities or units located within the Industrial Estates or Parks, which were notified prior to 14.09.2006, i.e., the EIA Notification, 2006 coming in to force.

3.This Issues with the approval of the competent authority.

(Dr.Satish C. Garkoti)

Director

2. It is the case of the petitioner that the public consultation process envisaged by the notification dated 14.09.2006 amending the Environment (Protection) Rules, 1986, is sought to be given a go-by through the impugned notification. Thus, the impugned notification is alleged to be unreasonable which would permit highly polluting industries which have commenced their operation prior to EIA notification dated 14.09.2006 to even expand their polluting industries going by the plea defying norms and regulations available, as they would not be affected or required to go to through the concept of public participation and public hearing.

3. The counter affidavit filed by the Ministry of Environment and Forests and Climate Change, Government of India, states that settled positions cannot be unsettled and there cannot be a fresh scrutiny requiring public participation or a re-sanction, when it is an existing industry. This is stated to be equally applicable for its expansion. It has been averred that as per Office Memorandum dated 16.05.2014, an interpretation has been given that exemption from public consultation is available only to projects located within industrial estates or parks which have obtained prior Environmental Clearance under EIA Notification, 2006. In this behalf, representations challenging the clarifications were addressed which were referred to an expert committee comprising Dr.S.R.Wate, Director, NEERI, Nagpur, Dr.R.K.Garg, Shri K.P.Niyati, Dr.A.B.Akolkar, Member Secretary, CPCB and Dr.A.L.Aggarwal, Former Deputy Director, NEERI, Nagpur.

4. The Ministry thereafter examined the matter on the recommendations of the Committee and came to the conclusion that the clarification given in Office Memorandum dated 16.05.2014 is not as per the intent of the EIA notification, 2006 since the same was made applicable for Industrial Estates which were existing on that date, like irrigation and road projects. The National Green Tribunal Bench, Pune, in that context, passed orders dated 08.08.2014. It is thereafter that the impugned Notification/Office Memorandum has been issued dealing with the recommendations of the Expert Committee in the context of the representations received. It has been clarified that the original intent of the EIA Notification, 2006 is to exempt from public consultation in the process of Environmental Clearance, Units being established or going for expansion in the Industrial Estates or Parks which were in existence on the date of the EIA Notification, 2006.

5. It has also been stated that the aforesaid is only a clarification and not a fresh exemption and as submitted by the learned Additional Solicitor General, it is always open in case a particular industry is polluting, to move the NGT in that behalf, even if it is an existing industry, it is only that a general consultative process is not applied in such a situation.

6. We are thus of the view that the impugned Notification/Office Memorandum cannot be faulted and if there is any individual grievance qua any particular nature existing, it is always open to the petitioner to move the NGT with requisite materials.

7. The writ petition accordingly stands dismissed with the aforesaid observations. Parties to bear their own costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ksr

To

1.The Secretary, Ministry of Environment, Forest & C.C  
Government of India, Indira Parayavarn Bhavan,  
CGO Complex, Lodhi Road, New Delhi 110 003.

2.The District Environmental Officer  
Tamil Nadu Pollution Control Board,  
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3.The Chirman, Tamil Nadu Pollution Control Board  
Guindy, Chennai.

4.The Member Secretary,  
Tamil Nadu Pollution Control Board  
Guindy, Chennai

+ 1 cc to Mr.Venkataswamy Babu, Advocate Sr.49326  
+ 1 cc to Mr.A. Ansar, Advocate Sr.49621

W.P.No.3514 of 2015

VD(CO)  
EU 25.09.15