



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2015

C O R A M

THE HONOURABLE Mr. JUSTICE B. RAJENDRAN

Writ Petition (MD) Nos. 10817 & 17643 of 2014

and

M.P. (MD) Nos. 1 & 1 of 2014

W.P. (MD) No. 10817 of 2014:

R.P. KALIAPPAN

.. Petitioner

Vs.

1. THE CHIEF CONTROLLER OF EXPLOSIVES,
GOVT. OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY,
5TH FLOOR, A BLOCK,
CGA COMPLEX, SEMINARY HILLS,
NAGPUR (M.S.) 440 006.

2. THE JOINT CHIEF CONTROLLER
OF EXPLOSIVES (SOUTH CIRCLE),
GREEMS ROAD,
SASTRI BHAVAN, CHENNAI - 6.

3. THE ADDITIONAL
DISTRICT MAGISTRATE & DISTRICT REVENUE
OFFICER, KARUR DISTRICT, KARUR.

4. THE DISTRICT COLLECTOR,
KARUR DISTRICT, KARUR.

5. P. MURUGESAN

6. SELVAMANI

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 1 to 4 from granting No Objection Certificate for construction of a explosives storing house (Magazine) or license to possess and sell explosives to the respondents 5 & 6 herein and further forbearing the respondents 5 & 6 from constructing magazine in the land situated at S.Nos. 1266 & 1268, Punnam Village, Aravakurichi Taluk, Karur District in violation of provisions of Explosives Rules 2008.

For petitioner ... Mr. B. Saravanan

For R1 & R2 ... Mr. P. Krishnasamy

For R3 & R4 ... Mr. S. Chandrasekar
Government Advocate

For R6 ... Mr. K. Natarajan
for
M/s. Ajmal Associates

For R5 ... No Appearance



W.P. (MD) No. 17643 of 2014:

SARASWATHI

Vs.

.. Petitioner

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1. THE CHIEF CONTROLLER OF EXPLOSIVES,
GOVT. OF INDIA, MINISTRY OF COMMERCE
AND INDUSTRY,
5TH FLOOR, A BLOCK,
CGA COMPLEX, SEMINARY HILLS,
NAGPUR (M.S.) 440 006.
2. THE COMMISSIONER,
DEPARTMENT OF REVENUE AND LAND REFORMS,
CHEPAUK, CHENNAI.
3. THE DIRECTOR,
TAMILNADU POLLUTION CONTROL BOARD, GUINDY,
CHENNAI.
4. THE DEPUTY CONTROLLER OF
EXPLOSIVES, SOUTH CIRCLE,
GREEMES ROAD,
SHASTRIBHAVAN, CHENNAI-6.
5. THE DISTRICT COLLECTOR,
KARUR DISTRICT, KARUR.
6. THE SUPERINTENDENT OF POLICE,
KARUR DISTRICT, KARUR.
7. THE TAHSILDAR,
ARAVAKURICHI TALUK OFFICE,
KARUR DISTRICT.
8. SELVAMANI

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents 1 to 7 consider the petitioner's representation dated 16.8.2014 and consequently direct the respondents 1 to 7 to take necessary action against 8th respondent.

For petitioner	...	Mr.P.Muthusamy
For R1 & R4	...	Mr.G.R.Swaminathan
		ASGI
For R2, R5&R7	...	Mr.S.Chandrasekar
		Government Advocate
For R6	...	Mr.V.Muruganandam
		Additional Govt. Pleader
For R3	...	Mr.Elaman
For R8	...	Mr.K.Natarajan
		for
		M/s.Ajmal Associates

C O M M O N O R D E R

Both the writ petitions are taken up together.

2. It is brought to the notice of this Court that the first writ petition is filed by the husband seeking Writ of Mandamus forbearing the respondents 1 to 4 from granting No Objection Certificate for construction of a explosives storing house (Magazine) or license to possess and sell explosives to the respondents 5 & 6 herein and further forbearing the respondents 5 & 6 from constructing magazine in the land situated at S.Nos.1266 & 1268, Punnam Village, Aravakurichi Taluk, Karur District in violation of provisions of Explosives Rules 2008. The second writ petition is filed by the wife of the petitioner in the first writ petition under the guise of seeking for considering the representation.

3. The learned counsel for the private respondents in both the writ petitions would only contend that this is nothing but a pure abuse of the process of the Court.

4. The sixth respondent has filed a counter specifically denying that no such representation was filed.

5. In this connection, I am fortified by the order passed by the Division Bench of this Court in *M.Ingaci Vs. The Commissioner, Devakottai & Others*, reported in 2010-2-L.W.785, to which I was also a party. In the said decision, following the Supreme Court decision, this Court has held that an application that could not even be considered, cannot be directed to be considered by the authority and therefore, very strongly opposed the application of this nature and even the very maintainability of the application itself. The relevant paragraph of the said judgment, viz., paragraph no.8 reads as under:"....

8. Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities to "consider". In the aforesaid situation, if the learned Judge, before directing the authorities to consider, had heard the petitioner herein, then the order of the Division Bench reprimanding the 5th respondent would have been brought to the notice of the learned Single Judge. Some time, we also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed by an authority superior to the one to whom we issue directions. Obviously, when the order is not complied with, since it cannot be complied with because of the hierarchy discipline, the officer has to face the contempt. All these can be avoided if we only bear in mind the guidelines given in the above case by the Supreme Court before we direct the respondent to "consider and pass orders".

<https://hcservices.ecourts.gov.in/hcservices/>
In this connection, it would also be worthwhile to refer to a judgment of the Supreme Court in the case of *A.P.SRTC Vs. G.Srinivas Reddy*, reported in (2006) 3 SCC 674 = 2006-3-L.W.170, wherein it has been



observed as follows:-

"19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time- barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

6. In view of the above decisions, I am of the considered view that these writ petitions are not at all maintainable and they have to be dismissed *in limini*. Accordingly, the writ petitions are dismissed. No costs. But, it is always open to the petitioners to file fresh applications seeking permission and not seeking extension under the guise of disposal of representation. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

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KARUR DISTRICT, KARUR.

9. THE TAHSILDAR,
ARAVAKURICHI TALUK OFFICE,
KARUR DISTRICT.

+2ccs to M/s.Ajmal Associates, SR.No.10155 & 10156

+1cc to Mr.B.Saravanan, Advocate SR.No.10205

+1cc to Mr.C.Elaman, Advocate SR.No.10195

W.P. (MD) Nos.10817 & 17643 of 2014
03.03.2015

rj2

PA/13.03.2015/5P/14C