

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.11110 and 11147 of 2016
and
W.M.P.Nos.9653 and 9681 of 2016

M/s.City Medi Tech Industries Pvt. Ltd.,
rep. By its Managing Director, R.Palanisamy,
5/128 Kooli Palayam, Bangal Thottam,
Vavipalayam PO,
Perumanallur Via,
Tiruppur 641 666.

...Petitioner in both W.Ps

Vs

1. The District Collector
Office of Collectorate,
Tiruppur District,
Tiruppur.
2. The Revenue Divisional Officer,
Dharapuram Division,
Tiruppur District.
3. The Block Development Officer,
Kundadam Panchayat Union,
Tiruppur District.
4. The Deputy Superintendent of Police,
Dharapuram, Tiruppur District.
5. The Inspector of Police (Law and Order)
Kundadam Police Station,
Dharapuram Taluk,
Tiruppur District.
6. The President,
Suriyanallur Village Panchayat,
Dharapuram Taluk,
Tiruppur District.

7. A.Kalimuthu

(R-7 impleaded, as per order passed today in
WMP.No.11371of 2016 of this W.P.

...Respondents 1 to 7 in W.P.No.11110 of 2016

1. The Assistant Executive Engineer (O & M)
TANGEDCO Kundadam,
Udumalai Electricity Distribution Circle,
Tiruppur District.

2. The Assistant Engineer (O & M)
TANGEDCO, Sooriyanallur,
Dharapuram Taluk,
Tiruppur District.

...Respondents 1 and 2 in W.P.No.11147 of 2016

Prayer in W.P.No.11110 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the sixth respondent to consider the representation of the petitioner Company, dated 07.03.2016, filed to grant building licence by extending the period for one year, within the time that may be stipulated by this Court.

Prayer in W.P.No.11147 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records culminated in the impugned order L.No.AEE/Sooriyanallur /KO/Complaint/A No.96/2016, dated 02.02.2016 on the file of the second respondent and to quash the same as void ab initio, not in accordance with law, and consequently, by way of mandamus, directing the respondents to consider to grant permanent electricity service connection with extra 100 HP to the petitioner Company.

For Petitioner : Mr.R.Muthukumarasamy
in both W.Ps. Senior Counsel, assisted by
Mr.K.S.Shankar Murali

For Respondents 1-6
in W.P.No.11110/2016:Mr.M.L.Mahendran
Government Advocate

For Respondent 7 :Mr.C.Prakasam

For Respondents in :Mr.S.K.Raameshuwar
W.P.No.11147/2016 Standing Counsel

COMMON O R D E R

The Writ Petition, viz., W.P.No.11110 of 2016, has been filed by the petitioner, seeking for issuance of a writ of mandamus to direct the sixth respondent to consider the representation of the petitioner Company, dated 07.03.2016, for grant of building permit by extending the period for one year.

2. The same petitioner has filed another Writ Petition, being W.P.No.11147 of 2016, to quash the order passed by the second respondent, dated 02.02.2016, and consequently, to direct the respondents to grant permanent electricity service connection with extra 100 HP.

3. As the issue involved, and the petitioner in both Writ Petitions are one and the same, and the relief sought herein are also inter-connected, these Writ Petitions are taken up together, and disposed of by this common order.

4. Heard Mr.R.Muthukumarasamy, learned Senior Counsel, assisted by Mr.KS.Shankar Murali, the learned counsel appearing for the petitioner/Industry, Mr.M.L.Mahendran, the learned Government Advocate for respondents 1 to 6 in W.P.No.11110 of 2016, Mr.C.Prakasam, the learned counsel appearing for the newly impleaded party, viz., the seventh respondent in W.P.No.11110 of 2016, and Mr.S.K.Raameshuwar, learned Standing Counsel for respondent/Electricity Board in W.P.No.11147 of 2016.

5. The petitioner is a Private Limited Company, incorporated under the Indian Companies Act, 2013. The petitioner Company proposes to establish an Industry, viz., "Common Biomedical Wastes Treatment Facilities" (CBWTF), for which purpose, they have purchased certain extent of lands in Sooriyanallur Village, Dharapuram Taluk, Tiruppur District, and applied to the Tamil Nadu Pollution Control Board (TNPCB) for the grant of consent to establish the said Industry. The Board has granted consent for establishment of the subject Industry, subject to certain conditions. After obtaining the consent from TNPCB, the petitioner approached the Town and Country Planning Authority, seeking building plan approval, and the building permit has been granted by the sixth respondent/Panchayat. During the course of construction, objection was raised by one K.Senthilkumar, to the establishment of the petitioner Industry, by filing an Application before the National Green Tribunal (NGT) viz., A.No.28 of 2016, seeking for permanent injunction not to permit the petitioner commencing construction activities in the aforesaid Village, and to direct the Pollution Control Board not to grant consent for running the Industry. The Pollution Control Board submitted before NGT

that the Consent to Establish has already been granted, imposing certain conditions, and on a proposal to be submitted by the petitioner herein, the application for grant of "Consent to Operate" would be considered on merits. Therefore, NGT, by order, dated 10.02.2016, disposed of the application filed K.Senthilkumar, by observing that the applicant can challenge the Consent to Establish order, or if there is violation of any of the conditions imposed thereunder, by approaching the Appellate Authority for the remedy in the manner known to law. It appears that the said K.Senthilkumar did not proceed with the matter any further. In the interregnum, the building permit, which was granted by the sixth respondent/Panchayat, in favour of the petitioner, had expired on 17.02.2016, and when the petitioner applied for extension of the building permit, the sixth respondent was not inclined to grant the same, on account of the objection raised by the public, which necessitated the petitioner to file Writ Petition in W.P.No.11110 of 2016. Similar is the problem with the Electricity Board, wherein, the Assistant Engineer, Operation and Maintenance (O & M), Tamil Nadu Generation and Distribution Corporation (TANGEDCO), Sooriyanallur, Dharapuram Taluk, Tiruppur District, viz., the second respondent in W.P.No.11147 of 2016, has passed an order, dated 02.02.2016, stating that, as the building permit has expired, and because of the public objection, electricity service connection cannot be granted to the petitioner-Company. This order, dated 02.02.2016 is impugned in W.P.No.11147 of 2016.

6. In the light of the order passed by NGT, dated 10.02.2016 and also due to the fact that Consent to Establish has already been granted by TNPCB, if the newly impleaded party/seventh respondent in W.P.No.11110 of 2016, or any other third party of the Village is aggrieved by the same, they have to approach the Appellate Authority, constituted under the provisions of Air (Prevention and Control of Pollution) Act, 1981.

7. The learned counsel for the newly impleaded party/seventh respondent in W.P.No.11110 of 2016 would submit that the applicant before NGT is a close associate of the writ petitioner, and it is virtually a collusive application, and that is why, the said K.Senthilkumar did not prosecute the matter further. This allegation is emphatically denied by the learned Senior Counsel appearing for the petitioner. Be that as it may, it does not prevent any other aggrieved person from approaching the Appellate Authority, constituted under the provisions of Air (Prevention and Control of Pollution) Act, 1981, in challenging the Consent to Establish granted in favour of the petitioner, or in the event of any violation of the

conditions imposed on the petitioner Company by TNPCB.

8. It has to be pointed out that Consent to Establish, does not automatically means that the petitioner is entitled to an order of consent to operate the subject Industry. In between, TNPCB has to verify whether petitioner has fulfilled all the norms, only thereafter, Consent to Establish could be granted. The apprehension of the seventh respondent, who is the President of the Tamizhaga Vivassaiyigal Sangam is that the biomedical wastes from the neighboring State of Kerala will be brought into Tamil Nadu if the Industry is allowed to function to a radius about 10 kilometers, and people cannot reside, and statistics shows that when such Industry was established in Kerala State, there were large number of cases filed, raising objection, as the persons living in the locality were effected by terminal illness, and this was attributed to the similar Industry in the Kerala State.

9. Therefore, it is submitted by the learned counsel for seventh respondent that after closing down the Industry in Kerala State, now, they have stepped into Tamil Nadu, and there are several Newspapers report, which shows that unauthorizedly biomedical waste is dumped in road margins, especially, in the Palaghat to Coimbatore Road, within the Tamil Nadu boundary.

10. It may be true that such hazardous Industry should not be permitted to operate, without adhering to the conditions, but, on a perusal of the counter affidavit filed by the Assistant Executive Engineer, TANGEDCO, it is seen that about 3,000 people of the Village had conducted road roko near the Bus Stand Dharapuram on 11.01.2016. Though there appears to be huge public resistance to the Industry being established in the said place, on account of the fact that consent to establish has been granted, the sixth respondent/Panchayat would not be justified in keeping the application filed by the petitioner, for extension of the building permit, indefinitely pending. If the period of the building permit is extended, consequently, the Electricity Board would consider the petitioner's request for the grant of temporary electricity service connection only for the purpose of putting up construction. Therefore, as long as the petitioner does not secure the extension of the building permit, they are not entitled to the electricity service connection.

11. In the light of the above, the Writ Petitions are disposed of with the following directions:-

i) The Sixth respondent/Panchayat of Suriyanallur Village is directed to consider the petitioner's application/

representation, dated 07.03.2016, made for extension of the building permit, and before doing so, the sixth respondent/Panchayat shall issue notice to the petitioner, the Revenue Officials, the Police Officials as well as seventh respondent, and also obtain appropriate information from the District Environmental Engineer of the Tamil Nadu Pollution Control Board, Tiruppur (South) at Palladam, and after hearing all the parties, the sixth respondent/Panchayat shall pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

ii) In the event of the petitioner able to secure orders of extension of the building permit, he shall approach the Assistant Engineer, (O & M) TANGEDCO, Sooriyanallur, Dharapuram Taluk, Tiruppur District, the second respondent in W.P.No.11147 of 2016, for grant of temporary electricity service connection for the construction purpose of the subject Industry.

iii) Since the seventh respondent stated that he represents the public of the Village, and has serious grievance in the manner in which Industry has been permitted to be established, liberty is granted to the seventh respondent to challenge the Order of Consent to Establish granted in favour of the petitioner by moving the Appellate Authority constituted under the provisions of Air (Prevention and Control of Pollution) Act, 1981.

iv) Since liberty has been granted to the seventh respondent, he is entitled to get certified copy of the order of Consent to Establish granted in favour of the petitioner, from the Tamil Nadu Pollution Control Board. Accordingly, there will be a direction to the District Environmental Engineer of the Tamil Nadu Pollution Board, Tiruppur (South) at Palladam, to furnish certified copy of the order of Consent to Establish granted in favour of the petitioner, within a period of two days from the date on which application is being made by the seventh respondent for certified copy.

12. In the result, the Writ Petition is disposed of, as stated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1) The District Collector
Office of Collectorate,
Tiruppur District, Tiruppur.
- 2) The Revenue Divisional Officer,
Dharapuram Division, Tiruppur District.
- 3) The Block Development Officer,
Kundadam Panchayat Union,
Tiruppur District.
- 4) The Deputy Superintendent of Police,
Dharapuram, Tiruppur District.
- 5) The Inspector of Police (Law and Order)
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- 7) The Assistant Executive Engineer (O & M)
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- 8) The Assistant Engineer (O & M)
TANGEDCO, Sooriyanallur,
Dharapuram Taluk,
Tiruppur District.
- 9) The District Environmental Engineer
The Tamil Nadu Pollution Board,
Tiruppur (South) at Palladam.

1 cc to Mr.C.Prakasam, Advocate, sr.27385
2 ccs to Mr.K.S.Shankar, Advocate, sr.27058, 27059
1 cc to The Government Pleader, sr.27429

Writ Petition Nos.11110
and 11147 of 2016

ug co
kra 19.05.2016