



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P (MD) No.5796 of 2016

and

WMP (MD) Nos.8386 & 5207 of 2016

M/s.SMR Aqua Food,
Rep. by Proprietor,
Mrs.M.Jeyanthi

... Petitioner

-VS-

1.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Thuvakudi, Trichy District.

2.The Assistant Engineer (O&M),
TANGEDCO, Ayyampalayam,
Musuri Taluk, Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records on the file of the rejection order passed by the 2nd respondent by his proceedings Ka.No.E.Me.Po/E.Kaa/A.Palayam/Koo.Katu/Aa.No.293/15-16 dated 08.02.2016 and quash the same and consequently directing the second respondent to provide electricity connection.

For Petitioner : Mr.K.Mahendran

For R1 : Mr.M.Murugan, Government Advocate
for Mr.Ilaman

For R2 : Mrs.Srimathi

O R D E R

This writ petition has been filed seeking to quash the order of rejection passed by the second respondent, dated 08.02.2016 and consequently direct the second respondent to provide electricity service connection.



2.The petitioner's concern is a Manufacturing Unit producing packaged drinking water after getting license and certificates from various authorities. The petitioner applied for service connection from the second respondent on 17.04.2013. The Executive Engineer, (Operations & Maintenance) Musiri approved the proposal for extension of supply to the petitioner and in fact, estimate was also prepared for a sum of Rs.4,55,370/-. The supply was sanctioned on certain conditions and the petitioner was awaiting for the service connection.

3.The second respondent sent a communication dated 12.07.2013, quoting the Government Order No.111-075754, dated 21.09.2011, under which, the petitioner's Mineral Water unit is classified under the category of 'A' i.e. 'over exploitation'. Hence, the consent from the Pollution Control Board must be obtained and submitted within seven days.

4.In the meantime, based on the news item published in 'The Hindu' dated 05.03.2013, the Green Tribunal initiated *suo-motu* action and directed the Tamil Nadu Pollution Control Board to take action on erring packaged drinking water manufacturer in Tamil Nadu.

5.The list of Industries were published by the Public Works Department falling under the category of 'A'-over exploitation and 'B'-safe and as per the list, out of 855 applications, 570 unites were categorized as 'B' i.e.'safe' and 252 unites were categorized as 'A' i.e. 'over exploitation'.

6.Taking into account the same, the Tribunal directed the Pollution Control Board, to close the units falling under the category of 'A'. Based upon that, the Chairman, Pollution Control Board sent a communication dated 20.01.2014, to the second respondent, to close the Unit.

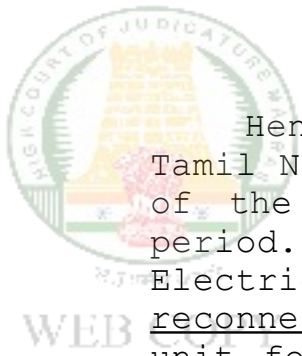
7.The second respondent in turn by the letter dated 24.01.2013, sent a communication to the District Environmental Engineering stating that till date no Electricity Connection has been given to the petitioner's company.

8.In the meantime, all the unit owners, who are doing Mineral Water business, filed applications before the National Green Tribunal and on 06.02.2014, the Green Tribunal permitted all the units to run with certain conditions, which read as under:-

"The members who are shown as applicants/Review Applications shall extract water from original source from which they have been extracting water in the past, from 10.00 a.m. to 5.00 p.m. every day;

2.That they shall not install any additional pubmps fro the purpose of extraction of water; and

3. That they shall maintain the meter reading in respect of supply of electricity energy till 13.02.2013.



Hence, a direction is issued to the first respondent, Tamil Nadu Pollution Control Board to monitor the compliance of the above conditions by respective units during this period. The respective assistant engineers of Tamil Nadu Electricity Board of concerned area are also directed to reconnect and restore the electric supply of the respective unit forthwith thereby enabling the unit to carry on their operation of extracting water as stated above."

9.The petitioner's unit alone was singled out because of the reason that the Unit did not have the electricity service connection.

10.The petitioner unit even though did not have the electricity connection, it was being run with the help of Generator. This was brought to the knowledge of the Green Tribunal by one Jeyaprakash, who has filed application No.22 of 2014 and thereafter, the petitioner's unit was ordered to be closed. But the main ground of closure was only on the ground that the sanction of the Pollution Control Board was not obtained, to operate the unit, using generator set.

11.In the meantime, the petitioner and others filed common writ petition No.34085 of 2014 before this Court challenging the G.O.Ms.No.142, Public Works Department, dated 23.07.2014 and obtained an interim order of stay on 22.12.2014. Based on the interim order, the petitioner filed Review Application No.9 of 2015 in Application No.220 of 2014 and the same has been listed for final hearing before the National Green Bench on 27.01.2016. But unfortunately, the Tribunal dismissed the Review Application and the operative portion of the orders reads as under:-

"In the light of the submissions made by both as well as original applicant, it is clear that the Review Applicant is not entitled to have enjoy the benefit of the order passed by the Tribunal dated 31.08.2015 and in such review of the matter there is no error apparent on the face of the records and accordingly the Review Application fails and the same is dismissed."

12.The Tribunal gave the reasoning that the Review Applicant is not having electricity connection at all. On the other hand, that the units have been using generator set, for which, there was no sanction from the said Pollution Control Board.

13.The learned counsel for the petitioner would submit that the petitioner will give an undertaking that they will not use the generator set and if their legitimate claim of electricity service connection is concerned, they are prepared to pay necessary charges and get the electricity service connection for the petitioner's unit.



14. It is also pointed out that despite the order of stay has been granted, which is enjoyed by all other units, the petitioner unit alone is not permitted to run on account of the fact that the petitioner unit is not able to get the electricity service connection.

15. Learned counsel for the Electricity Board would submit that because of the ceiling of the premises by the Pollution Control Board, they are not able to give the service connection and if the access is given to the electricity board, they will be able to give the service connection.

16. The learned counsel for the petitioner would submit that the petitioners are being made run to pillar to post and the first and second respondents are shifting their responsibilities to one shoulder to another shoulder and thus, the business of the petitioner is getting affected.

17. In view of the undertaking given by the learned counsel for the petitioner that the petitioner unit will not use the generator set, the petitioner should be given permission to get the electricity service connection, so as to move the Pollution Control Board to get further permission.

18. The fact remains that the 252 units, which are categorized as 'A' i.e. 'over exploitation' have been permitted to run the unit, except the petitioner's unit only because of the fact that the petitioner's unit is not able to get the electricity service connection.

19. It is pointed out by the learned counsel for the second respondent that the second respondent is willing to provide electricity connection, provided it is not objected to by the first respondent.

20. The learned counsel for the first respondent would submit that for the internal wiring and access to the electricity board to provide electricity service connection, ceiling may be removed and thereafter, the petitioner must get the permission from the first respondent.

21. Considering the facts and circumstances discussed supra, for the limited purpose of providing electricity service connection, the first respondent shall remove the ceiling and provide access to the electricity board.

22. Once the second respondent provides the electricity service connection, it is open to the petitioner shall approach the first respondent to get No Objection Certificate for running the unit based upon the interim order passed by this Court in the writ petition. The process of providing electricity service connection shall be completed within a period of two weeks from the date of receipt of a copy of this order.



23. This writ petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

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/True copy/

Sd/-
Assistant Registrar (Crl.)

Sub Assistant Registrar

To:

1. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Thuvakudi, Trichy District.

2. The Assistant Engineer (O&M),
TANGEDCO, Ayyampalayam,
Musuri Taluk, Trichy District.

+1 CC to Mr. K. MAHENDRAN, Advocate, SR No. 64835

W.P(MD) No. 5796 of 2016 and
WMP(MD) Nos. 8386 & 5207 of 2016
01.11.2016

raj2
SH/SKS-RR:21.11.2016:5P/4C