



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P.[MD].No.2303 of 2017
and
W.M.P.(MD).Nos.1935 and 1936 of 2017

TTK Blue Metals,
rep. by the Managing Partner,
T.Thanikodi,
S/o.Thangaraj

.. Petitioner

Vs.

1. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032.
2. The District Collector,
Theni, Theni District.
3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Theni.
4. The Superintendent Engineer,
Distribution (O & M),
Periyakulam Road, Theni.
5. The Assistant Executive Engineer,
Distribution (O & M),
Theni Road, Aundipatti,
Theni District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pursuant to the order passed by the 1st respondent through his proceedings No.T8/TNPCB/NOT OBTAINED CTO/X-D/Theni -6/W&A/2017, dated 31.01.2017 and consequential order passed by the 1st respondent vide his proceedings No.T8/TNPCB/NOT OBTAINED CTO/X-D/Theni-6/EB/2017 dated 31.01.2017 and quash the same.



For Petitioner : Mr.M.Subash Babu
For respondents 1 & 3 : Mr.M.Govindan,
Special Government Pleader
For 2nd respondent : Mr.S.Chandrasekar,
Government Advocate
For respondents 4 & 5 : Mr.S.M.S.Johny Basha

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O R D E R**[Order of the Court was made by R.SUBBIAH, J.]**

This writ petition has been filed challenging the order of closure of the petitioner / firm and also consequential order of stoppage of power supply, passed by the first respondent dated 31.01.2017.

2.It is stated in the petition that the petitioner / firm is a partnership firm. Before establishing the unit, on 18.12.2009 the petitioner had submitted an application before the Pollution Control Board for consent to establish the firm. The third respondent on 24.12.2009 granted consent to establish the firm for two years with certain conditions, for which he had also paid a sum of Rs.18,000/- as fees. For the year 2012, the petitioner firm had paid another sum of Rs.18,000/- as fees and the same was also acknowledged by the Board. Thereafter, on 04.04.2014 the petitioner was served with a notice, in which it is directed that the petitioner should pay a sum of Rs.30,000/- for renewal of consent order. Accordingly, the petitioner firm paid a sum of Rs.30,000/- by way of cash, for which the Pollution Control Board has also issued a cash receipt. While so, the petitioner firm served with a show cause notice dated 10.12.2014. In the said show cause notice, it is stated that the petitioner firm is running the unit without any consent from the Board. When the petitioner approached the Board, they informed that it is a formal notice. Thereafter, for two years, the petitioner was running the unit without any hindrance.

3. It is also stated in the petition that once again on 28.11.2016 the petitioner firm served with another show cause notice stating that the Board inspected the unit and found that the unit is in operation without obtaining consent order and accordingly, directed to reply within three days from the date of receipt of notice. Immediately, on 14.12.2016 one of the partners of the petitioner firm approached the Board and sought for 30 days time to cause suitable reply through representation. After receiving the said reply, the first respondent passed two impugned orders. In the first impugned order, the first respondent, based on the recommendation of the third respondent, directed to close the unit and disconnect the power supply with immediate effect. In the second impugned order, the 1st respondent recommended the 5th respondent to disconnect the power supply of the petitioner / firm



with immediate effect. Aggrieved by the same, the petitioner has come up with this writ petition.

4. The learned counsel for the petitioner submitted that before passing the impugned order, no reasonable opportunity was given to the petitioner. Though he had sought for 30 days time for suitable reply, without passing any order on the same, the first respondent straight away passed the impugned order. Since there is violation of principles of natural justice, he approached this Court by filing this writ petition.

5. Mr. M. Govindan, learned Special Government Pleader, took notice on behalf of the Pollution Control Board and on instructions, submitted that the petitioner is running the unit without obtaining consent from the Pollution Control Board and only after providing sufficient opportunity, the impugned orders have been passed. Therefore, absolutely, there is no infirmity in the order passed by the first respondent. Thus, he prayed for dismissal of the writ petition. The learned counsel appearing for the other respondents also reiterated the same.

6. By way of reply, the learned counsel for the petitioner by relying on Section 21(4) of the Act submitted that before passing the impugned order, no reasonable opportunity of being heard was given to the petitioner. Hence, the impugned orders are liable to be set aside on the ground of violation of principles of natural justice.

7. Though very many contentions have been raised by the learned counsel for the petitioner, the main grievance of the petitioner is that the impugned orders have been passed without giving sufficient opportunity as provided under Section 21(4) of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Act"). According to the petitioner, on 14.12.2016 one of the partners of the petitioner firm appeared before the third respondent and sought for 30 days time to give suitable reply to the show cause notice. According to the Board, on 14.12.2016, one of the partners of the petitioner firm appeared for personal hearing before the Board and furnished reply to the show cause notice. But, it is seen from the record that on 14.12.2016 one of the partners of the petitioner firm has, in fact, sought for 30 days time to give suitable reply to the show cause notice by way of a representation, which shows that he had not given any reply to the show cause notice. On the contrary, during the personal hearing, it is recorded that one of the partners of the petitioner firm appeared for personal hearing and furnished the reply to the show cause notice. If it is so, the same would have been noted in the impugned order. But, in the impugned order, only the requisition made by the petitioner firm alone is noted. Thus, we *prima facie* satisfied that there is a violation of principle of natural justice and also the reasonable



opportunity as provided under Section 21(4) of the Act has not been given to the petitioner firm.

8. In view of the same and in the interest of justice, we are inclined to set aside the impugned order and also to remit the matter back to the first respondent.

9. In the result, this Writ Petition is allowed and the impugned orders passed by the first respondent are quashed and the matter is remitted back to the Board. The petitioner is directed to give his reply to the show cause notice, dated 28.11.2016, within a period of one week from the date of receipt of the order. On receipt of the same, the Board is directed to give a reasonable opportunity of personal hearing to the petitioner firm to put forth their submission and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. Till such time, the fourth respondent is directed to restore the electricity connection. However, it is made clear that if there is any deviation on the part of the petitioner, the Board can pass appropriate order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

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W.M.P. (MD) .Nos.1935 and 1936 of 2017
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GCG

TE/JM/SAR-I : 21/02/2017 : 5P/6C

<https://helpline.ecm.mca.gov.in/Mse/Query> Ash Babu, Advocate, SR.9259