



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.6590 of 2011

and

M.P(MD)No.1 of 2011

A.Athisayakani

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The President,
Kulasekarapatti Panchayat,
Kurumbalaperi Village,
Tenkasi Taluk,
Tirunelveli District.

3.T.Paulraj

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records relating to the impugned order dated 06.05.2011 issued by the second respondent and quash the same.

For Petitioner : Mr.P.Thiagarajan

For Respondents : Mr.M.Alagathevan
Special Government Pleader for R.1

Mr.A.Muthu Esakki for R.2

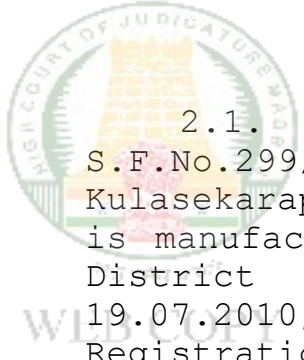
Mr.S.S.Thesigan for R.3

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ORDER

This writ petition has been filed seeking a writ of Certiorari to call for the records relating to the impugned order dated 06.05.2011 issued by the second respondent and quash the same.

https://hcservices.courts.gov.in/hcservices are as follows: The facts leading to the filing of this writ petition,



2.1. The petitioner is running a cottage industry in S.F.No.299/1C at Pavvorchatram, Melapavoor Main Road, Kulasekarapatti Village, Tenkasi Taluk, Tirunelveli District and is manufacturing charcoal in a small scale. The General Manager, District Industries Centre, Tirunelveli, by proceedings dated 19.07.2010, issued a Cottage Industries Certificate, under Registration No.33/29/11260.

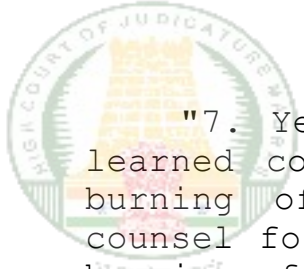
2.2. Further, the Tamil Nadu Pollution Control Board also issued consent order No.334, dated 25.08.2010, vide proceedings in No.F.TNV1061/OS/DEE/TNPCB/TNV/A/2010 for running the said industry. Meanwhile, the third respondent herein filed a public interest litigation in W.P(MD)No.13841 of 2010 **[T.Paulraj v. The District Collector, Tirunelveli District, Tirunelveli and others]** and the Honourable Division Bench of this Court, by order dated 31.03.2011, directed the second respondent herein to examine the issue whether as per Section 160 of the Tamil Nadu Panchayats Act, the cottage industry of the petitioner is in need of the licence for running the said unit and in the event of the second respondent having come to the conclusion that the cottage industry of the petitioner is in need of the licence, directed to consider the applications of the petitioner, dated 03.12.2010 and 14.02.2011 and pass appropriate orders on merits and in accordance with law within eight weeks from the date of receipt of a copy of the said order.

2.3. Despite the same, the second respondent, without affording due opportunity of hearing to the petitioner, passed the impugned order, rejecting the claim of the petitioner for issuance of a licence to run the aforesaid cottage industry. Hence, the present writ petition is filed.

3. According to the learned Counsel for the petitioner, the impugned order came to be passed by the second respondent, without affording due opportunity of hearing to the petitioner and hence, the same is vitiated on the ground of violation of principles of natural justice and accordingly, he prays for quashing the same.

4. I have considered the submissions made on either side and perused the materials available on record, including the order of the Honourable Division Bench of this Court in **T.Paulraj v. The District Collector, Tirunelveli District, Tirunelveli and others** [W.P(MD)No.13841 of 2010, decided on 31.03.2011].

5. In an earlier occasion, the Honourable Division Bench of this Court, in **T.Paulraj v. The District Collector, Tirunelveli District, Tirunelveli and others** [W.P(MD)No.13841 of 2010, decided on 31.03.2011], considered the public interest litigation filed by the third respondent herein against the cottage industry run by the petitioner herein and observed at paragraphs 7 and 8 as under:

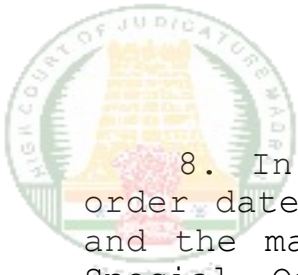


"7. Yet another factor to be noted is that according to the learned counsel for the petitioner, power is in the process of burning of the coconut shell. But, according to the learned counsel for the fifth respondent, no power is used with regard to burning of coconut shell so as to get license under Section 160 of the Act. These are factual matters and sitting under Article 226 of the Constitution of India, this Court cannot examine the issue and pass final orders. Apart from this, according to the learned counsel for the fifth respondent the application is pending before the fourth respondent/panchayat. Hence, we are of the opinion that ends of justice would be met by directing the fourth respondent viz., The President, Kulasekarapatti Panchayat, Kurumbalaperi, Tenkasi Taluk, Tirunelveli District to consider the application of the fifth respondent and pass appropriate orders.

8. Accordingly, the fourth respondent/The President, Kulasekarapatti Panchayat, Kurumbalaperi, Tenkasi Taluk, Tirunelveli District is directed to examine the issue as to whether as per Section 160 of the Tamil Nadu Panchayats Act, the fifth respondent cottage industry is in need of the license for running of the unit and in the event of the fourth respondent/President coming to the conclusion that the said cottage industry is in need of the license, consider the applications submitted by the fifth respondent dated 03.12.2010 and 14.02.2011, which are pending before him and pass appropriate orders on merits and in accordance with law, after affording reasonable opportunity to all the parties concerned within a period of eight weeks from the date of receipt of a copy of this order."

6. On perusal of the aforesaid order passed by the Honourable Division Bench of this Court, it is seen that a specific direction has been given to the second respondent herein to examine the issue as to whether as per Section 160 of the Tamil Nadu Panchayats Act, the cottage industry of the petitioner herein is in need of the license for running of the unit and in the event of the second respondent herein coming to the conclusion that the said cottage industry is in need of the license, the applications submitted by the petitioner dated 03.12.2010 and 14.02.2011, are directed to be considered by the second respondent and appropriate orders be passed on merits and in accordance with law, after affording reasonable opportunity to all the parties concerned within a period of eight weeks from the date of receipt of a copy of the said order.

7. However, the order of the Honourable Division Bench has not been adhered to by the second respondent herein, while rejecting the claim of the petitioner for licence to run the cottage industry, for the reason that no opportunity of hearing has been afforded to the petitioner by the second respondent before passing order dated 06.05.2011. Hence, the impugned order passed by the second respondent is vitiated on the ground of violation of principles of natural justice.



8. In fine, this writ petition is allowed and the impugned order dated 06.05.2011 passed by the second respondent is quashed and the matter is remitted to the authority concerned, viz., the Special Officer of the second respondent Panchayat for fresh consideration. Accordingly, the Special Officer of the second respondent Panchayat shall consider the claim of the petitioner and pass appropriate orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as the interested parties, if any and strictly in line with the directions issued by the Honourable Division Bench of this Court in **T.Paulraj v. The District Collector, Tirunelveli District, Tirunelveli and others** [W.P(MD)No.13841 of 2010, decided on 31.03.2011], within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

The District Collector,
Tirunelveli District, Tirunelveli.

+1cc to M/S.P.THIAGARAJAN, Advocate SR.No.71978

+1cc to Special Government Pleader, SR.No. 71997

rsb
MAS/KK/SAR4:18.08.2017:4P-4C

W.P(MD)No.6590 of 2011
and
M.P(MD)No.1 of 2011
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