

IN THE JUDICATE OF MADRAS HIGH COURT

Reserved on : 07.03.2018
Delivered on : 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No.34223 of 2017
and
W.M.P.Nos.38106 & 38107 of 2017

S.Selva Rajendran ..Petitioner

Vs.

1. Tamil Nadu Pollution Control Board
rep.by it's Chairman,
No.76, Mount Salai, Guindy, Chennai-600 032.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
No.950/1, Poonamallee High Road,
Arumbakkam, Chennai-106.
3. The Assistant Engineer (O & M),
Tamil Nadu Electricity Board,
Tollgate, Chennai.
4. J.Noorudin,
S/o.Janibasha,
No.4, T.H.Road,
New Washermenpet,
Chennai-600 081.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the entire records relating to the Proceedings No.TNPCB/LAW/LA1/F.31381/ CHN/Compl/2009/A-1, dated 30.08.2011 and Proceedings No.TNPCB/LAW/LA1/F.31381/CHN/Compl/2009/EB-1/dated 30.08.2011 of the 1st respondent herein as confirmed in the order dated 28.11.2017 in Appeal No.5 of 2012 on the file of the Appellate Authority, Tamil Nadu Pollution Control Board and the order in Lr.No.DEE/TNPCB/CHN/Appeal No.5/2017, dated 13.12.2017 on the file of the 2nd respondent herein and to quash the same and consequently, to direct the respondents 1 & 2 herein to consider the applications of the petitioner herein for

consent to operate Ice factory resubmitted on 18.03.2011 and again on 21.12.2017 vide application No.11788199 in accordance with law.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents: Mr.H.Yasmeen Ali (for R1 & R2)

Mr.P.R.Dhilip Kumar (For R3)

Mr.Syed Mustafa and Mr.A.S.Bharathi, for R4

ORDER

(R. SUBBIAH, J.)

This writ petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the Proceedings No.TNPCB/LAW/LA1/F.31381/CHN/Compl/2009/A-1, dated 30.08.2011 and Proceedings No.TNPCB/LAW/LA1/F.31381/CHN/ Compl/2009/EB-1/dated 30.08.2011 issued by the 1st respondent herein as confirmed by the order dated 28.11.2017 in Appeal No.5 of 2012 on the file of the Appellate Authority, Tamil Nadu Pollution Control Board and the order in Lr.No.DEE/TNPCB/CHN/Appeal No.5/2017, dated 13.12.2017 on the file of the 2nd respondent herein, and to quash the same and consequently, to direct the respondents 1 & 2 herein to consider the applications of the petitioner herein for consent to operate Ice factory resubmitted on 18.03.2011 and again on 21.12.2017 vide application No.11788199 in accordance with law.

2.The brief facts of the case of the petitioner, which are necessary to dispose of this writ petition, are as follows

2-1.The premises at Door No.3, Thiruvetriyur High Road, Chennai, was taken on lease by one Mr.V.A.Mohamed Nynar from one Mrs.Mumtaz Begum. He had established an Ice Factory in the year 1969 and obtained necessary licence from Corporation to operate the Unit and the said premises is classified as Industrial area. According to the petitioner, the said Mohamed Nynar operated his Ice Factory for several years without causing any pollution or inconvenience to the people in the neighbourhood. No pollution or any untoward incident occurred ever since the year 1969. In the year 2004, since the said Mohamed Nynar was not in a position to run the Ice Factory due to his illness and old age, the landlady Mumtaz Begum asked the petitioner herein to take over the Ice Factory and run the same as tenant under her. Accordingly, the petitioner has purchased the said Ice Factory from the said Mohammed Nynar during the year 2004 and the landlady attorned the tenancy in his favour. The petitioner has obtained licence from Chennai Corporation in the year 2004 with the consent of the landlady. The licence was also renewed by the Corporation for the subsequent years. The process for manufacturing Ice is simple. Ammonia liquid is circulated into

a coil to expand the coil and it makes the water cold. The process carried on in the petitioner's Unit to manufacture Ice is comparable to Air Conditioner Plants used in Cinema Hall, Auditorium, multi-storied Office complex etc., The petitioner has been operating his Ice Manufacturing Unit without any interference from the landlady Ms.Mumtaz Begum since 2004. However, the 4th respondent herein, who is the son of the landlady Mumtaz Begum, has filed an eviction petition in R.C.O.P.No.1018 of 2007 on the file of the XIII Judge (Rent Controller), Small Causes Court, Chennai, claiming to be the owner of the above said premises based on a Settlement Deed said to have been executed on 11.12.2006 by the landlady Mumtaz Begum. The 4th respondent claiming to be the landlord has bent upon to evict the petitioner and thereby close down the petitioner's ice factory established in the above said premises 48 years ago. As the 4th respondent was not successful in getting an order of eviction, he has filed complaint dated 19.05.2008 to the respondents 1 & 2 herein levelling various allegations based on misleading facts. Immediately, the petitioner has taken necessary steps to submit applications to the 1st respondent seeking consent to operate the Ice manufacturing Unit. While so, the 2nd respondent herein issued an order on 05.06.2008 under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31-A of Air (Prevention and Control of Pollution) Act, 1918, directing the petitioner to shift the Unit from the present premises, on the ground that Tamil Nadu Pollution Control Board Board (TNPC Board) cannot issue consent in view of the dispute between landlord and tenant. Hence, the petitioner had filed a writ petition in W.P.No.14761 of 2008 and this Court by order dated 10.07.2008 allowed the said writ petition holding that the dispute between the landlord and tenant is an irrelevant consideration in the matter concerning pollution and further, the 2nd respondent herein is not empowered to pass orders under Section 33-A of the Water (P and CP) Act, 1974.

2-2.Subsequently, the 2nd respondent issued another show cause notice on 24.02.2009 for the closure of the Unit alleging that the Unit is being operated without consent. The petitioner has submitted his explanation on 16.03.2009 and simultaneously applied to the 1st respondent herein for consent to operate the Unit. The 2nd respondent herein has returned the applications on 04.05.2009 pointing out certain discrepancies in regard to furnishing of certain particulars. With necessary clarifications, applications for consent were resubmitted on 29.05.2009, however, the 2nd respondent herein has passed orders on 12.09.2009 rejecting the applications for consent citing untenable reasons. Against that orders, the petitioner had preferred Appeals in Appeal Nos.114 & 115 of 2009 before the Appellate Authority against the order dated 12.09.2009 rejecting the applications for consent. While the facts remain thus, the 1st respondent herein issued direction on 25.09.2009 under

Section 31-A of the Air (P and CP) Act, 1981 to shift the Unit from the present location to an industrial area within a period of three months and threatened that in default directions for closure of Unit will be issued. Hence, the petitioner has filed another writ petition in W.P.No.24853 of 2009 and this Court by the order dated 03.12.2009 set aside the order issued by the 1st respondent on 25.09.2009 to shift the Unit, and this Court directed the Appellate Authority to dispose of the Appeal Nos.114 and 115 of 2009 pending against the order rejecting the applications for consent.

2-3.Pursuant to the said direction of this Court, on 09.11.2010 the Appellate Authority set aside the order dated 12.09.2009 rejecting the applications for consent and remanded the matter to the 1st respondent to decide only two issues viz.,

i)Applicability of Coastal Regulations Zone Notification to the premises in question and

ii)The prohibition regarding the Storage, handling of Ammonia and the loss in the quantity of Ammonia used in the process of the Unit and the consequent pollution risk if any, which were raised for the first time in the appeal and consider the applications for consent to operate the Unit.

Thereafter, the 1st respondent has issued a fresh show cause notice on 07.03.2011 alleging that the safe guards for handling ammonia is not put in place. The petitioner gave his reply on 18.03.2011 and resubmitted the application for consideration in terms of the order of remand in Appeal Nos.114 and 115 of 2009. On 26.04.2011, the 2nd respondent herein has acknowledged the receipt of his reply and assured that his applications for consent will be considered. However, the 1st respondent herein has directed the closure of the Unit with immediate effect and ordered to disconnect power supply by the impugned orders dated 30.08.2011. The 1st respondent herein did not consider the applications for consent in terms of the order of the Appellate Authority, instead passed orders under Section 31-A of the Air (P and CP) Act to close the Unit. The petitioner has filed Appeal No.5 of 2011 before the Appellant Authority challenging the closure order dated 30.08.2011. As the appellant authority was not functioning at that time, he was constrained to approach this Court by filing W.P.No.24010 of 2011 and got stay till the constitution of Appellate Authority. While the said appeal filed under the Air (P and CP) Act is pending, the 2nd respondent herein has issued a show cause notice dated 15.04.2014 under the Water (P and CP) Act based on the complaint of one M.K.International Realty Pvt Ltd., adjacent land owner who was interested in purchasing the premises occupied by the petitioner, for development. The petitioner sent a reply to the said show cause notice. The application filed by the MK International Realty Pvt Ltd before the National Green Tribunal was disposed of giving liberty to the Complainant to agitate the

matter before the Appellate Authority in the Appeal No.5 of 2012. By the order dated 28.11.2017 made in Appeal No.5 of 2012, the Appellate Authority dismissed the appeal conforming the closure order dated 30.08.2011 passed by the 1st respondent. The petitioner filed an appeal on 26.12.2017 before the Green Tribunal (SZ), Chennai. Since the Green Tribunal (SZ), Chennai is not functioning for want of Technical Member, the petitioner has filed the present writ petition before this Court seeking to quash the impugned orders.

3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the 1st respondent passed the impugned closure order without properly appreciating the manufacturing process of Ice carried on by the petitioner and the applicability of Hazardous Chemicals Rules and Coastal Regulation Zone Notification to the premises in question and the said closure order dated 30.08.2011 was also affirmed by the Appellate Authority by its order dated 28.11.2017 in Appeal No.5 of 2012 without considering the grounds raised in the said appeal. Therefore, the impugned orders are liable to be quashed. The learned counsel for the petitioner would further submit that the petitioner is manufacturing ice by processing water and salt procured from outside and the chemical-ammonia is not involved in the processing of Water and Salt for manufacturing ice. Ammonia is a component used in the machinery for manufacturing ice to develop required chillness to convert the water from the liquid form into solid ice bar. The petitioner is not carrying on any industrial activity within the meaning of the Rule 2(h) of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989, nor having an isolated storage of Ammonia in the site within the meaning of Rule 2(i) of the said Rules. Neither the power conferred under Section 33-A of the Water (P and CP) Act and Section 31-A of the Air (P and CP) Act nor the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 empowers the respondents 1 & 2 herein to permanently close down any industry. The petitioner is using only one time storage of 420 kgs of ammonia in the machinery for manufacturing ice and it would not be construed as isolated storage exceeding the quantities permitted under Schedule-2 of the Hazardous Chemicals Rules, 1989.

4. It is further submitted by the learned counsel for the petitioner that similarly, as regards the applicability of the restrictions imposed under the Coastal Regulation Zone (CRZ) Notification in regard to drawl of water for the purpose other than drinking and other permitted activities, it is stated by the petitioner that the Unit is in existence since 1969, hence, the restrictions imposed under CRZ Notification is not applicable to the petitioner's Unit. Without prejudice to the above contentions in regard to the applicability of CRZ Notification, the petitioner has also filed an affidavit

undertaking that he will not draw water from the ground water source available in the premises for his industrial use and the entire water required for his industrial consumption for manufacturing ice will be out-sourced from other area by way of transportation through lorry. Hence, the question of violation of CRZ Notification does not arise in operation of the ice manufacture Unit of the petitioner located in an area classified as Industrial area. Thus, the learned counsel for the petitioner sought for quashing the impugned orders.

5. The learned counsel for the respondents-Pollution Control Board, by filing a detailed counter, would contend that the Pollution Control Board had received a complaint dated 19.05.2008 from the 4th respondent stating that the residents of the premises are facing breathing problems, health impacts due to frequent Ammonia leakage occurring from the petitioner's Ice Factory and unhygienic conditions caused due to stagnation of waste water. It is also informed that in their premises there is tomb of Pranjyothi Mahan and that devotees practising medication and yoga experienced breathlessness due to Ammonia leakage from the factory. In the complaint, it was also stated that the premises is not leased to the person operating the ice factory. Hence, the Pollution Control Board has sent a letter vide Lr.No.DEE/TNPCB/CHN/2008, dated 05.06.2008 to shift the Unit especially on concerns of safety considering the location of residences very adjacent to the factory as well as the regular visit by the public to the tomb and the threat and risk posed by the factory to the public due to poor status of maintenance of the factory, which uses Ammonia. Since the Unit was functioning without the consent of the Tamil Nadu Pollution Control Board, the owner of the factory was informed that operating the Unit without valid consent of Tamil Nadu Pollution Control Board, attracts the penal provisions of Section 31-A of Air (P & CP) Act 1981 and Section 33-A of Water (P & CP) Act 1974, which includes closure of the Unit and stoppage of power supply. The petitioner is using Ammonia in the process of manufacturing Ice. Ammonia is listed as a toxic chemical in Part II of Schedule 1 of the Manufacture, Storage and Import of Hazardous Chemical Rules 1989, as amended in 2000 at SL.No.31. It meets the toxicity criteria specified in Part 1(a) of Schedule 1. Any Unit handling Ammonia is required to handle the same in compliance with Rule 4-1(a), 4-2(a) & (b), which specifies the general responsibility of the occupier of an industry to provide evidence to show that he has identified the major accident hazardous and he has taken adequate steps to prevent such major accidents and to limit their consequences to persons and the environment. He should provide to the persons working on site with the information, training and equipment including antidotes necessary to ensure their safety. But, according to the learned counsel for the respondents-Pollution Control Board, it was not established by the petitioner that the

Unit is using the Ammonia in accordance with Rule 4-1(a), 4-2(a) & (b) the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. The learned counsel for the respondents-Pollution Control Board would further submit that the Ice Unit of the petitioner was inspected by the officials of the Pollution Control Board on 24.02.2009 and a show cause notice was issued to the Unit vide Proc.No.DEE/TNPCB/CHN/Z-1/PC149/2008, dated 24.02.2009 on various grounds, including the ground that the Unit has not complied with the relevant provisions of Sections 21, 22 & 23 of the Air (P & CP) Act 1981 as amended as 1987, Sections 8 & 9 of the Environment (Protection) Act 1986, Rule 12 of the Environment (Protection) Rules 1986 and Rule 4 of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989, as amended in 2000. The application filed by the petitioner was returned vide Letter No.DEE/TNPCB/CHN/OS1071/2009-1, dated 04.05.2009 on the grounds that in the application, the place was owned by one Gnana Soundari Ice Factory, but on the contrary, in Sub-Clause 3 it was informed that the land is on lease, however, no sale deed or lease deed was enclosed. Further, in the application it was stated that there is no process emission. On the contrary, it has been stated that 420 kgs of Ammonia is charged into the system at the time of commissioning and that 60 kgs is charged per annum as make up quantity. This indicates that there is release of Ammonia emissions to the environment which has not been accounted for. Further, though there are complaints regarding health problems caused by leakage of Ammonia, no risk analysis report and maximum credible accident analysis report with respect to the persons likely to be affected based on prevailing land use, has not been enclosed. Moreover, the Unit is situated within the Coastal Regulation Zone. Therefore, consent cannot be granted for operating the Unit. Therefore, considering all these facts, the impugned orders were rightly passed by the respondents 1 & 2 for closure of the Unit. Thus, the learned counsel for the Pollution Control Board sought for dismissal of the writ petition.

6.The learned counsel appearing for the 4th respondent/landlord submitted that the petitioner and his erstwhile employer Mohamed Nynar have been running the Ice Factory in the subject premises without any consent from the respondents 1 & 2 required under Section 21 of Air (P & CP) Act, 1981 and Section 25 of Water (P & CP) Act, 1974, all these years. The petitioner, conveniently suppressing the materials on record, has managed to run the ice factory for almost 14 years without any consent order from the concerned authority, causing serious health hazards to the lives of the people in and around the said factory. Ammonia and gaseous wastes leaked from the petitioner's Ice Factory has contaminated the ground water and the action of the petitioner in running the Ice Factory in the subject premises causing damage to the underground water could

never be rectified or redeemed. Further, the area which was notified as an industrial zone, thereafter, due to the over population and extension of city limits, has now been regularised as mixed residential zone and further, industries once existed have moved far away, for the purpose of protecting the lives of the people to be kept out of danger from hazardous chemical and factory wastes. While the fact being so, the petitioner alone, with an intention to get rid of all the laws and flouting regulations of pollution polices for one reason or the other, still wants to get consent for a factory which is now situated within the city limits and completely surrounded by children and elderly people who were easily prone to diseases such as respiratory problems that is caused by Ammonia. Thus, the learned counsel for the 4th respondent submitted that the writ petition is liable to be dismissed.

7. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

8. Though very many contentions have been raised on either side with regard to the factual aspects, the only question which falls for consideration in this writ petition is Whether the impugned orders issued by the respondents 1 & 2 ordering closure of the Unit of the petitioner, are not legally sustainable warranting this Court to make an interference? If this question is decided, that would suffice to dispose of the writ petition, since We are not dealing with each and every factual aspect of this case.

9. It is the main submission of the learned counsel for the petitioner that the impugned order dated 30.08.2011 passed by the 1st respondent ordering closure of the petitioner's Unit, which was confirmed by the appellate authority vide the impugned order dated 28.11.2017, suffers from total non-application of mind and the same is liable to be set aside. In support of this contention of the learned counsel for the petitioner, the attack was made by the learned counsel on the impugned order mainly on the reason assigned by the 1st respondent to the effect that the impugned order has been passed merely on the apprehension of probable leakage of Ammonia from the Ice Factory. In this regard, the learned counsel for the petitioner submitted that the respondents 1 & 2 have failed to take note of the fact that the petitioner is not carrying on any industrial activity within the meaning of the Rule 2(h) of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. Further, the petitioner is using only one time storage of 420 kgs of ammonia in the machinery for manufacturing ice and it would not be construed as isolated storage exceeding the quantities permitted under Schedule 2 of the Hazardous Chemicals Rules 1989. When that being the position, according to the learned counsel for the petitioner that the impugned order of closure passed by the 1st respondent merely on the apprehension of

probable leakage, cannot be legally sustained.

10. But, as contended by the learned counsel for the respondents 1 & 2, We find that ammonia is listed as a toxic chemical in Part II of Schedule 1 of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, as amended in 2000 at Sl.No.31 and it meets the toxicity criteria specified in Part 1(a) of Schedule 1. Therefore, for running the Unit, there is bounden duty on the part of the petitioner to provide evidence to show that he has identified the major accident hazardous and he has taken adequate steps to prevent such major accidents and to limit their consequences to persons and the environment and he also provided the persons working at the site with the information, training and equipment including antidotes necessary to ensure their safety. But, in the instant case, the petitioner has not established the above criteria. Therefore, it is immaterial whether it is one time storage or isolated storage. The petitioner has to establish that he is handling Ammonia as prescribed under Rules 2(i) of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, which he has miserably failed to do. Therefore, We do not find any infirmity in the impugned closure order passed by the 1st respondent.

11. Next submission made by the learned counsel for the petitioner is that the restrictions imposed under Coastal Regulation Zone Notification are not applicable to the petitioner's Unit since the Unit is in existence from the 1969. But, We find that series of complaints were sent to the Pollution Control Board with regard to the ammonia gas leakage from the ice factory frequently. In fact, one of the complaints given by one Shahin Banu dated 23.05.2014, states that ammonia gas was leaking from the factory frequently and that her family is continuously exposed to the ammonia gas whenever it leaked from the factory. She and her five year old kid were severely affected by the ammonia gas which leaked from the Ice factory of the petitioner. That apart, there is another complaint by one H.Ashok Kumar on behalf of M/s.M.K.International Realty Pvt Ltd vide reference dated 02.04.2014, alleging that the ground water in the premises is contaminated with ammonia and the persons who drank the ground water are facing health related problems. From the above facts and circumstances of the case, it is seen that the petitioner's Ice Factory has not taken any measure to provide safety system for processing the ammonia for manufacturing Ice. Considering the risk posed by the Unit to the surrounding residents, the respondents 1 & 2 have rightly rejected the request of the petitioner for grant of consent to operate the Unit at the subject land. Hence, considering all the above facts and circumstance, We do not find any infirmity in the impugned orders passed by the respondents 1 & 2. We do not find any valid reason to make an interference with the impugned order. Hence, the writ petition is liable to be

dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To,

1.The Chairman,
Tamil Nadu Pollution Control Board
No.76, Mount Salai, Guindy, Chennai-600 032.

2.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
No.950/1, Poonamallee High Road,
Arumbakkam, Chennai-106.

3.The Assistant Engineer (O & M),
Tamil Nadu Electricity Board,
Tollgate, Chennai.

+1 CC to Mr.V.R. Raja Sekar, Advocate sr 19886.
+1 Cc to Mr.A.S. Baradhi, Advocate sr 19817.

W.P. No.34223 of 2017
and
W.M.P.Nos.38106 & 38107 of 2017

RR(CO)
SP(22/03/2018)

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