

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED : 27.07.2018

ORDER PRONOUNCED ON : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.10468 of 2004 and
WP.MP.No.12248 of 2004 and
WV.MP.No.2353 of 2004

1.M.Kaliyaperumal
2.R.Sundaramoorthy
3.A.P.Narayanasamy
4.S.Balaraman
5.S.Gunasekaran

... Petitioners

Vs

1.The State of Tamilnadu,
rep. by the Secretary to Government,
Local Administration Dept.,
Fort St. George,
Chennai-9.

2.The Managing Director,
Chennai Metropolitan Water
Supply and Sewerage Board,
M.R.C. Nagar, Raja Annamalaipuram,
Chennai - 28.

3.The Revenue Divisional Officer,
Ponneri,
Tiruvallur District.

4.The Tahsildar,
Ambattur Taluk,
Tiruvallur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of writ of mandamus, directing the respondents to grant license to the petitioners for extracting, Transporting and Supplying Water to the Public, from the Patta Lands of the respective Land Owners as per their applications submitted under Section 5(2)(ii) of the Madras Metropolitan Area Ground Water (Regulation) Act 1987.

For Petitioners : Mr.S.Srinivasan

For Respondents : Mr.S.N.Parthasarathy
Government Advocate
(for R1, R3 & R4)

Mr.V.N.Mohanraj (for R2)

O R D E R

This writ petition is preferred by the petitioners to grant a licence for extracting, transporting and supplying water to the public from the patta lands of the respective land owners under section 5(2) (ii) of the Madras Metropolitan Area Ground Water (Regulation) Act 1987.

2.Brief case of the petitioners:

The facts of the case is that due to the consecutive failure of monsoon and rapid development of Chennai city and its sub-urban areas, the scarcity of water become day to day problem of the residents. The available source of water which is not adequate to meet the requirements of drinking and other purposes. The water supply had started to transport ground water from outside the city for a reasonable prize some 20 years back. Petitioners are purely depending upon this income only for their livelihood and transport the water through Lorries. More than 2000 people are involved in this business and there are 3000 Lorries have been engaged in this process to meet the requirements of water for the general public of the Chennai city ultimately resulting lowery of water table and the quality of water is also reduced. The State and Central Governments to provide un-interrupted water supply to the people like linking of rivers and nationalization, rain water harvesting, minimizing the usage of water for agricultural purpose, if at all not controlled and regulated by a statute, the Government of Tamil Nadu passed an act called the Chennai Metropolitan area Ground water (regulation) Act 1987 proposing to recharge the optimum utilization of ground water and formation of hydraulic barrier against the sea water intrusion.

3.The Chennai Metropolitan water supply and sewerage Board has reported all other possibilities of augmenting water supply of Chennai city have been exhausted and that it is necessary to regulate and control the extraction and use of ground water in any form and to conserve the same in the city of Chennai and the

district of Chengalpattu and to regulate and control the transport of ground water. Though the act was passed as early as in the year 1987 the implementation it was vigorously during 1998 and 1999 only. The point of time the petitioners vehicles were seized and confiscated by the authorities. The authorities further insisted us to have no objection certificate from the owners of the well from where the ground water has been exhausted and insisted on licence for transportation.

4.The petitioners filed writ petitions praying for the direction directing the authorities to follow the provisions of the act in granting licence and forbearing the respondents from impounding the vehicles vide the orders dated 5.4.1999 directing to dispose of the application of the respective petitioners as well as the owners of the well. Petitioners obtained no objection certificate from the well owners and grant of licence for extraction and transportation of the ground water as on 8.11.2000. As per the provisions of the act, the competent authority fails to inform their decision for licence within 90 days from the date of receipt , the licence shall be deemed to have been granted to the applicant and such person shall be a deemed holder of a licence for which purpose he applied. In spite of this fact our vehicles have been regularly laigettted and comprehensated.

5.Objections filed by the Respondents:

The Chennai Metropolitan area groundwater (regulation) Act 27 of 1987 CMWSS Board is the competent authority for the Chennai city and the Revenue officials are the competent authority for the respective scheduled villages and as per the act provisions the public must also bound follow the rules and regulations of the act or otherwise it is treated as illegal.

6.The transport of ground water in the scheduled villages and supplies the same to the general public of the Chennai city. Hence, as per the Chennai metropolitan area groundwater (regulation) act 27 of 1987 it is necessary to obtain licence from the competent authority both for extraction and transportation of ground water. As per section 5(1)(a) of the act no person shall extract or transport the ground water from the scheduled area for any purpose other than domestic purposes.

7.CMWSS Board is the agency authorized by the government to give protected water to the Chennai citizens. For this purpose, the board took various measures to maintain the water supply to the public. During the drought period the board depends on the

ground water available in the well fields and sub-urban aquifer. Hence it is necessary to protect the ground water potential of the aquifer. In order to protect the aquifer, the government implemented groundwater regulation act. As per the amendment act 37 of 2002 G.O.Ms.No.166 dated 21.11.2002, necessary provisions also included in the act for installing Rainwater Harvesting structures. So, the Government had already taken measures to conserve the water by implementing rainwater harvesting structures.

8.The Board is the authorized agency to give protected water to the Chennai citizen. For this purpose, water from three lakes namely Redhills, Cholavaram, and Poondi reservoir are mainly used for the city drinking water supply. During the drought period, the board depends on the ground water available in the well fields and also from southern coastal aquifer. Hence it is necessary to protect the ground water potential of the aquifer. In order to protect the aquifer, the Government Implemented Groundwater Regulation Act.

9.The groundwater regulation act was effectively implemented from 15.2.1988 onwards and every financial year necessary licences were issued to the public both for extraction and transportation upto the financial year 1996-97. Due to the consecutive monsoon failure and to conserve the ground water the board has taken a decision not to issue licences for commercial purposes. Hence the financial year 1996-97 onwards the issuing of licences has been stopped and the persons who applied for licences were refused on hydro geological aspects and the illegal operators were fined by the revenue officials.

10.The petitioners and others have applied for licence to the Revenue Divisional Officer, Ponneri who is the competent authority and all the applications were forwarded to the CMWSS Board vide letter No.Rc.8965/2000/a1, dated 9.2.2001 and Lr.No.RC.8144/2000/A1 dated 9.2.2001 to obtain technical opinion to issue licences. All the applications were technically scrutinized by the board and the same has been returned to the Revenue Divisional officer, Ponneri refusing on technical grounds vide Lr.No.CMWSSB/O&M/Sr.HG/36/2001, dated 23.2.2001. In turn, the Revenue Divisional Officer, Ponneri also issued the refusal of licence to the applicants and as per the order of this Court dated 5.4.1999, the authorities disposed all the applications in time.

11.The petitioners are running a commercial water supply business. It is necessary for them to obtain licence from the competent authority both for extraction and transportation of ground water. No person is allowed to extract and transport ground water from the scheduled villages. In spite of that some persons are extracting and transporting ground water illegally. The authorities seized some of the water transporting Lorries and levied fine.

12.The learned counsel for the petitioners submits that three thousand Lorries involved and engaged in this process and only the petitioners are targeted. Which is in violation of Article 14 of the Constitution of India.

13.The learned counsel for the petitioners submits that the competent authority has not passed any orders within 90 days from the date of application the applicant has been granted licence as such petitioners are licenses having valid licence. Since the application are pending without any considerations for the past more than 3½ years.

14.The learned counsel for the petitioners submits that the petitioners are carrying on the business past nearly 20 years and the respondents have failed to consider that entire family of the petitioners depends upon them.

15.The learned Government Advocate appearing for the respondents 1, 3 and 4 opposed the submissions of the petitioners and sought for dismissal of the writ petition.

16.I have heard Mr.S.Srinivasan, learned counsel for the petitioner, Mr.S.N.Parthasarathy, learned Government Advocate for the respondents 1, 3 and 4 and Mr.V.N.Mohanraj, learned counsel for the 2nd respondent and perused the entire materials available on record.

17.The main contention of the writ petition is that they sent detailed representation to the respondents on 12.12.2003 to consider their case sympathetically to grant licence for extraction and transportation of water supply into the Chennai City. Considering the submissions, this Court inclined to dispose of the writ petition for the prayers sought by the petitioners.

18.In the result:

a) The writ petition is disposed of;

b) The respondents are directed to consider the petitioners' application filed under section 5(2)(ii) of the Madras Metropolitan Area Ground Water (Regulation) Act, 1987 along with the petitioners' representation, by giving personal opportunity to the petitioners and the affected parties and pass appropriate orders for granting licence to the petitioners;

c) The said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Local Administration Dept.,
Fort St. George,
Chennai-9.

2.The Managing Director,
Chennai Metropolitan Water
Supply and Sewerage Board,
M.R.C. Nagar, Raja Annamalaipuram,
Chennai - 28.

3.The Revenue Divisional Officer,
Ponneri,
Tiruvallur District.

4.The Tahsildar,
Ambattur Taluk,
Tiruvallur District.

+1 cc to Mr.S.Srinivasan, Advocate Sr.No.61963

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W.P.No.10468 of 2004 and
WP.MP.No.12248 of 2004 and
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MR(CO)
CSL/12.03.2019