

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.09.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.15872 of 2018
and
W.M.P.Nos.18877 & 18878 of 2018

M/s.Subbayan and Co, Unit-II,
rep. by sole proprietor,
S.F.No.10, Vavipalayam Village,
Pongalur, Palladam Taluk,
Tiruppur District. Petitioner

Vs.

- 1.The District Collector,
Collectorate Office,
Tiruppur District-641 604.
- 2.The Tamil Nadu Pollution Control Board,
rep. by its Chairman,
No.76, Mount Salai, Guindy, Chennai.
- 3.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur-South, 12A Pollachi By-Pass Road,
Palladam, Tiruppur-641 664. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the 2nd respondent culminating in the order dated 15.06.2018 made in Proceedings No.T4/TNPCB/F/.13187/TPS0480/DEE/2018 and to quash the same.

For Petitioner : Mr.S.Saisathiyajith
For Respondents: Mr.K.Rajendra Prasad, AGP (For R1)
Mrs.H.Yasmeen Ali (For R2 & R3)

ORDER

(Order of the Court was delivered by R.SUBBIAH, J.,)

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorari calling for the records of the 2nd respondent culminating in the order dated 15.06.2018

made in Proceedings No.T4/TNPCB/F/.13187/TPS0480/DEE/2018 and to quash the same.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner that the petitioner-Unit was set up during the year 2012 and it is manufacturing charcoal by using coconut shell in a controlled process through a Klin chamber. Prior to setting up of the Unit, an application was made by the petitioner-Unit to the Tamil Nadu Pollution Control Board (in short 'TNPCB') for obtaining consent to establish the Unit. After thorough verification of the land particulars and scientific assessment of the land as suitable for the Unit, consent was also granted by the respondents 2 & 3 to establish the Unit as early as in the year 2012. Subsequently, the Unit had applied for obtaining consent to operate the Unit. It is further stated by the petitioner that similar nature of many Units in the same and nearby Districts, are undertaking the same activity. However, the authorities had informed the petitioner that a batch of cases related to the functioning of charcoal Units, such as the petitioner-Unit, are pending before the National Green Tribunal (South-Zone) and on that reason, the authority had failed to process the application of the petitioner-Unit and kept the same as pending. While so, a neighbouring land owner with mala fide intentions filed a false complaint before the 2nd respondent about the petitioner-Unit. The 3rd respondent thereafter caused inspection of the Unit. The petitioner-Unit was not permitted to operate the Unit. While so, without considering the claim of the petitioner-Unit, the 2nd respondent has passed the impugned order to seal the premises of the Petitioner-Unit. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3-1.The respondents 2 & 3 have filed a joint counter affidavit contending that the petitioner-Unit had obtained consent to establish the Unit under the Water (Prevention & Control of Pollution) Act, 1974 as amended in 1988 (hereafter referred to as "Water Act") and the Air (Prevention & Control of Pollution) Act, 1981 as amended in 1987 (hereinafter referred to as 'Air Act' vide Board Proceedings No.F.TPR2729/OS/DEE/TNPCB/TPR/W&A/2012, dated 14.11.2012 for the manufacture of Coconut Shell Charcoal - 780 T/Month subject to the following conditions:-

a)The Unit shall provide proper arrangements for the collection of quenching waste water to carry out treatment.

b)The Unit shall provide proper pipeline arrangements for the reuse of treated quenching waster water back into the process.

c)The Unit shall provide inner lining to the coconut shell burning pits to avoid seepage of

charcoal laden waste water into the sub soil.

d)The Unit shall commence the manufacturing activities only after obtaining consent to operate from the Board.

e)The Unit shall provide an ETP to treat the quenching water and the scrubber bleed off and ensure that the entire treated trade effluent is reused and no effluent is discharged outside either directly or indirectly.

f)The Unit shall provide a totally impervious side wall using appropriate material such as refractive bricks or high temperature resistant metal casing to ensure that there is no seepage of quenching water from the pits.

g)The Unit shall provide six number of piezometers of adequate depth all around the Unit's premises and shall monitor the ground water and furnish quarterly reports to the Board.

h)The Unit shall provide a common stack of height 40m with suction arrangements to collect the smoke generated from 9 numbers of coconut shell charcoal burning pits.

i)The Unit shall provide wet scrubber to the stack.

j)The Unit shall provide proper dust collection arrangements.

k)The operation of the Unit shall not attract any complaint from the nearby habitations.

l)The Unit shall provide suitable APC measures such as common stack followed by wet scrubber arrangements so as to achieve the AAQ/Emission standards prescribed by the Board and shall provide scientific flare system."

3-2.It is further stated by the respondents 2 & 3 that the petitioner-Unit was inspected on 18.06.2013 and found that the Unit was in operation without providing adequate Air Pollution Control (APC) measures and without obtaining consent for operation from the Board. A show cause notice was issued to the Unit under the Air Act vide proceedings No.F.TPR2792/TPR/A/2013 dated 28.06.2013. The petitioner-Unit in its letter dated 13.07.2013 informed that it would provide necessary APC measures and apply for consent for operation. When the petitioner-Unit was inspected again on 08.09.2014, it was noticed that the petitioner-Unit was in operation without providing APC measures. Hence, notice was issued to the petitioner-Unit again vide proceedings No.F.TPS0480/TPS/A/2014 dated 15.09.2014 under the Air Act. The petitioner-Unit is in its letter dated 26.09.2014 requested the Board to grant time for providing APC measures. Again, the petitioner-Unit had been reminded to obtain consent for operation by mentioning the

expiry of validity of consent for establishment in the Board Lr.No.F.TPS0480/DEE/TNPCB/TPS/2014 dated 13.11.2014. Thereafter, the petitioner-Unit had been inspected on 15.02.2017 and found that the petitioner-Unit was in operation without providing pollution control measures and without obtaining consent for operation. Hence, a show cause notice was issued to the Unit Proceedings No.F.TPS0480/DEE/TNPCB/A/2017, dated 17.02.2017 under the Air Act (P & CP, 1981. Meanwhile, some complaints were received from the public regarding the operation of the charcoal Unit illegally and causing air pollution and water pollution in the groundwater in the nearby villages. The Unit was inspected on 23.05.2017 and found that the Unit was still carrying out the charcoal production in open pits without any APC measures for it. In the light of the above said facts and in exercise of the powers conferred under Section 33A of the Water Act and Section 31A of the Air Act, the Board has issue directions vide proceedings No.78/TNPCB/F.13187/TPS-1/W&A/2017, dated 14.06.2017 for the closure of the Unit and for the stoppage of electricity to the Unit.

3-3.While so, a public complaint was received during May, 2018 from one D.Rajamani, on behalf of the nearby villages, stating that the petitioner-Unit was polluting the groundwater and the air environment. Subsequently, the petitioner-Unit was inspected on 24.05.2018 and found that the Unit was in operation despite the issuance of direction for closure by the Board on 14.06.2017 and without providing any Air pollution control measures and water pollution control measures. The petitioner-Unit had ignored the direction issued for the closure of the Unit and involved in the production activity with the help of TNEB service connection availed for the nearby Agricultural land for farming. Hence, the Board in exercise of the powers conferred under Section 33A of the Water Act and Section 31A of the Air Act, directed the District Collector, Tiruppur to seal the premises of the petitioner-Unit, by proceedings dated 15.06.2018. Subsequently, the petitioner-Unit was sealed on 03.07.2018 by the Village Administrative Officer, Vavipalayam Village, in the presence of the Assistant Engineer, O/o.DEE, TNPCB, Tiruppur South.

3-4. According to the respondents, the petitioner-Unit has not still complied with the conditions stipulated for the consent for establishment. It is further stated by the respondents that the similar cases relating to charcoal Units in Tiruppur District is still pending before the National Green Tribunal (Southern Zone), Chennai. Thus, the respondents sought for dismissal of the writ petition.

4.Today, when the matter is taken up for hearing, the learned counsel for the petitioner has filed an additional affidavit, wherein the petitioner has given undertaking to comply with any condition/measures imposed by the TNPCB. The

relevant portions in the said additional affidavit read as follows:-

"3.The petitioner respectfully submits that he is ready and willing to make a fresh application for necessary consent under the Water Act and the Air Act before the TNPCB as on date. The petitioner undertakes to comply any conditions/pollution control measures/orders/directions that the TNPCB may impose for grant of such consent as per the existing rules and guidelines.

4.The petitioner further undertakes that in the event of any new guidelines being implemented by the TNPCB pursuant to the proceedings before the Hon'ble NGT (SZ), the petitioner would implement any such additional or modified guidelines and undertake to install any additional or modified technologies or machineries as and when directed by the TNPCB to do so."

The learned counsel for the petitioner would submit that in view of the above said undertaking given by the petitioner, a suitable direction may be given to the respondents by quashing the impugned order.

5.Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the 1st respondent and the learned Standing Counsel for the respondents 2 & 3.

6.Considering the facts and circumstances of the case and taking note of the above said undertaking given by the petitioner, this Court passes the following order:-

The impugned order is quashed and the petitioner is permitted to submit fresh application to the 2nd respondent for consent to operate the Unit, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such application, the 2nd respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner and it is for the 2nd respondent to pass orders purely on merits and in accordance with law.

With the above terms, this writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssv

To,

1.The District Collector,
Collectorate Office,
Tiruppur District-641 604.

2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Guindy, Chennai.

3.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur-South, 12A Pollachi By-Pass Road,
Palladam, Tiruppur-641 664.

+lcc to Mr.S.Sai Sathyajith, Advocate, S.R.No. 62537

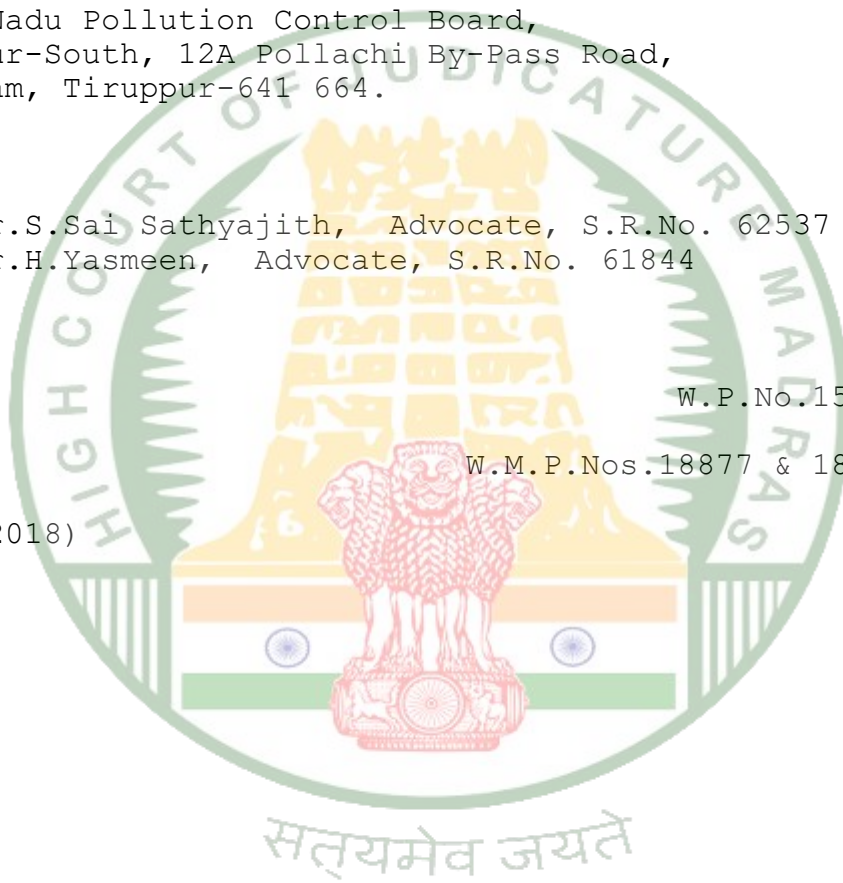
+lcc to Mr.H.Yasmeen, Advocate, S.R.No. 61844

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GN(18/09/2018)



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