



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2018
DELIVERED ON : 19.04.2018

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THE HONOURABLE MR.JUSTICE **C.T.SELVAM**
AND
THE HONOURABLE MR.JUSTICE **A.M.BASHEER AHAMED**

W.A. (MD) No.50 of 2018
and C.M.P. (MD) No.261 of 2018
against
W.P (MD) .No.20469 of 2017

Chokkar .. Appellant /6th Respondent

Vs.

- 1.Ramky Energy and Environment Ltd.,
Undurmikidakulam Village,
Mukkulam, Tiruchuli Taluk,
Virudhunagar District,
Rep. by its Project Head,
Mr.V.S.Venkatesan, ..1st Respondent/Petitioner
- 2.The District Collector,
Virudhunagar District,
Virudhunagar.
- 3.The Superintendent of Police,
Virudhunagar Town and District.
- 4.The Deputy Superintendent of Police,
Thiruchuli Taluk,
Virudhunagar Town and District.
- 5.The Inspector of Police,
A.Mukkulam Police Station,
Tiruchuli Taluk,
Virudhunagar District.
- 6.The Tamilnadu Pollution Control Board,
Rep. by the District Environmental Engineer,
TNPCB,
Virudhunagar Town and District. .. Respondents 2 to 6/
Respondents 1 to 5

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set-aside the order dated 10.11.2017 in W.P. (MD) No.20469 of 2017.



Constitution of India, praying this Court To issue a writ of Mandamus Directing the respondents to provide necessary police protection to our factory employees, premises and vehicles in accordance with our representation dated 9.10.2017 & 31.10.2017.

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For Appellant : Mr.G.Prabhu Rajadurai

For 1st Respondent : Mr.N.Dilip Kumar

For Respondents 2 to 6 : Mr.M.Murugan,
Government Advocate

JUDGMENT

[Judgment of the Court was delivered by C.T. SELVAM, J]

With consent of both sides, this Writ Appeal is disposed of at the stage of admission.

2.First respondent sought an order of police protection for its employees, premises and vehicles in W.P.(MD) No.20469 of 2017 for engaging and handling bio-medical waste and this Court was pleased to direct the same under order dated 10.11.2017. Appellant, who was impleaded as 6th respondent on the date of order under challenge, has preferred this appeal.

3.Learned counsel for appellant submitted that first respondent/ petitioner had not requisite environmental clearance and as the order under challenge was passed on the very date on which appellant was impleaded as party respondent in the writ petition, opportunity to appellant to explain the position, as would disentitle first respondent to get an order of police protection, was not afforded.

4.Learned counsel for appellant submitted that as per notification of the Ministry of Environment and Forests in S.O. 1553 dated 14.09.2006, industries which fell within Category 'A' in the Schedule thereto have to, before undertaking any construction work, or preparation of land by the project management except for securing the land, obtain environmental clearance from the Ministry of Environment and Forests, Government of India, while those which fall under category 'B' of the Schedule would have to obtain the same at the hands of the State Environment Impact Assessment Authority (SEIAA). Learned counsel pointed out that the requirement would be attracted even in the case of expansion or modernization of existing projects or activities. First respondent has admitted to up-gradation of incinerator, a facility which was found satisfactory by the Tamil Nadu Pollution Control Board as late as in 2017. Learned counsel submitted that as per schedule to the notification dated 14.09.2006 and serial No.7(d) thereunder, all integrated facilities having incineration and landfill or incineration alone



towards common hazardous waste treatment, storage and disposal facilities (TSDFs) fell under category A and require prior environmental clearance.

5. He drew reference to judgment of the National Green Tribunal in **Haat Supreme Wastech Private Ltd. & Others. V. State of Haryana and Others dated 28.11.2013**, wherein the question "Whether or not the bio-medical waste disposal plants require Environmental Clearance (EC) in terms of the Environmental Clearance Regulation, 2006 (for short '2006 Notification')" came for consideration and such Tribunal had found that bio-medical treatment plants, such as the first respondents, required environmental clearance in terms of Entry 7(d) of the Notification of 2006.

6. Learned counsel informed that initially authorisation from Tamil Nadu Pollution Control Board had been obtained for a period of one year from the date of issue under Authorisation No: BMW - 0055 dated 22.02.2005 and that the same stood issued to another and the first respondent had been incorporated on 22.02.2006. He however, fairly conceded that through necessary amendment, consent order obtained in the year 2005 had been made applicable to the first respondent. Referring to proceedings of the Commissioner of the concerned Panchayat Union dated 28.02.2007 in Na.Ka.No.A4/1532/06, learned counsel submitted that building construction had been commenced only thereafter. The first respondent unit was upgraded in 2009. He contented that the authorisation issued by the Tamil Nadu Pollution Control Board for segregation, storage and disposal of Bio-medical Wastes on 21.03.2016 was valid for a period of 3 years from the date of issue. The notification and the authorisation were not a one time affair but was periodic. The notification of 14.09.2006 is to be understood as applicable to all projects which had not been constructed or wherein production had not commenced. As initial authorisation granted on 22.02.2005 had expired in 2006, a doubt arose as to whether authorisation has been continuously renewed since first respondent had obtained permission for construction only in the year 2007. Learned counsel submitted that authorisation issued on 21.03.2016 for a period of 3 years indicated that no periodical renewal of authorisation had been obtained by first respondent and in the absence thereof, the notification of 14.09.2006 automatically came into play. Submitting as above, learned counsel placed reliance on the decision of the National Green Tribunal in **Rayons-Enlightening Humanity and another v. Ministry of Environment and Forests and others in Application No.86 of 2013 dated 18.07.2013**, wherein, in paragraph No.7, it has been held as follows:

"7. In the meanwhile, on 14th September, 2006, the EIA Notification came into force. As per Entry No.7(i) of the Schedule to the said Notification, common MSWM facility which was listed in category 'B' required prior EC from the SEIAA.

clarif

(i) Since the EIA Notification, 1994 has now been superseded by EIA Notification, 2006, all projects activities listed under the EIA Notification, 2006 shall require prior environment clearance under the said Notification without linking it to the date of land acquisition, if the project activity has not commenced at the site.

(iii) All such projects listed in both EIA Notifications, 1994 and 2006, shall require prior environment clearance irrespective of issue of NOC if the project related activity has not yet commenced at site. The validity of NOC should not be extended without asking the proponent to seek prior environment clearance under the EIA Notification, 2006.

<https://hcservices.wednet.edu/hcservices/>



Learned counsel contended that in **Rayons** case, as in the present, the Green Tribunal was concerned with a case where no work of the project had been carried on at the site in question and it had ruled that the project activity must be such as well directly connected with the establishment of the plant i.e., activity which is related to setting up, operating and maintenance of the plant.

7. Learned counsel for first respondent submitted that necessary authorisation of Tamil Nadu Pollution Control Board, initially obtained on 22.02.2005, had been renewed from time to time and the last renewal was from 15.03.2016 under proceedings of the Board dated 21.03.2016 and valid upto 15.03.2019. Appellant was a party to proceedings in W.P.(MD) No.10953 of 2017, wherein first respondent had challenged the order of the Revenue Divisional Officer, Aruppukottai, Virudhunagar District passed in exercise of power under Section 203 of the Tamil Nadu Panchayat Act, 1994, directing stoppage of first respondents functioning. Such petition as also W.P.(MD) No.1931 of 2016 filed by Villagers seeking directions towards preventing the first respondent from setting up and operating a "Bio-Medical Waste Disposal Unit" without following due process of law as also W.P.(MD) No.10957 of 2013, wherein the first respondent sought police protection were considered and disposed of under common order by a Division Bench of this Court on 05.09.2017. This Court had passed the following order:

"17. Accordingly, the following orders are passed:-

- i) W.P(MD)No.10957 of 2013 stands allowed. The order impugned passed by the third respondent stands set aside.
- ii) W.P(MD)No.10953 of 2017 stands disposed of by directing the second respondent to give adequate police protection as and when required, only for the purpose of maintenance and the trial of the petitioner unit alone.
- iii) Till the consent to operate is obtained from the fourth respondent, the petitioner cannot run the unit.
- iv) The District Environmental Engineer, the fourth respondent in W.P(MD)No.10953 of 2017 is directed to pass an appropriate orders within a period of six weeks from the date of receipt of a copy of this order in the light of the observation made earlier.
- v) The District Medical Officer, Madurai is directed to conduct the Screening Camp along with 8 officials mentioned, who participate earlier, on 20.09.2017.
- vi) The fourth respondent and the District Medical Officer are further directed to communicate their decision, both to the petitioner in W.P(MD)No.10953 of 2017 and W.P(MD)No.1931 of 2016.
- vii) In order to maintain transparency and fairness one Mr. Dr. A. Rengarajan, M.D., Retired Professor of ~~Madurai Medical College~~ is also directed to be added as one of the doctors in the panel, which is



directed to make inspection on 20.09.2017.

viii) The petitioner shall not be allowed to carry his vehicle for the purpose of running the unit and it is made clear that they would be permitted to use for the trial running and maintenance alone.

ix) In view of the above, W.P(MD)No.1931 of 2016 is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed."

Learned counsel submitted that the Environment (Protection) Act came into force in 1986 and as per first notification S.O.60 (E) dated 27.01.1994, 30 industries had been notified and Bio-Medical Waste was not one of them. The notification dated 14.09.2006 at clause 2 stated as follows:

"2.Requirements of prior Environmental Clearance (EC) :- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

The Green Tribunal under orders ***dated 28.11.2013 in Haat Supreme Wastech Pvt. Ltd. & Others. v. State of Haryana & Others in Appeal No.63 of 2012*** had held that environmental clearance was also required for Bio-Medicate Waste Disposal Plants. Thereafter, the Ministry of Environment and Forests had issued Notification S.O.1142(E) on 17.04.2015 introducing item No.7(da). Learned counsel referred to the schedule in the notification of 14.09.2006 to explain that the same provided as follows:



LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		Category with threshold Limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)

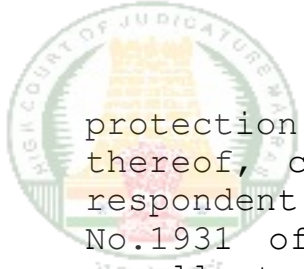
The Schedule read with Clause 2 of the notification made clear that while the activity falling under Sl.No.3 above fell into category 'A' requiring Central Government Clearance, that in Sl.No.4 fell under Category 'B' requiring clearance from State Environmental Authority. He then referred to notification of the Ministry of Environment and Forests in S.O.1142(E) dated 17.04.2015, which reads as follows:

"In the said notification, (reference to notification dated 14.09.2006) in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"7(da)	Bio-Medical Waste Treatment Facilities	-	All projects	-

Learned counsel thus explains that new category 7(da) - Bio-Medical waste Treatment facilities fell under Sl.No.4 and the same fell under category 'B', where regards no Central Government Clearance was envisaged, but clearance required was of the State Environmental authority. Learned counsel submitted that environmental clearance was to be obtained at the nascent stage of industrial activity. He submitted that environmental clearance having been obtained for the first respondent concern even in the year 2005, the same fell under category envisaged in clause (ii) of the circular dated 15.01.2008 referred in paragraph 7 (herein above reproduced) in **Rayons** Case. Learned counsel made a further submission that in Rayons case environmental clearance had lapsed, while infers the case of first respondent, the same was in force from 03.11.2005. The first respondent had obtained 'consent to establish' even before the notification of 15.01.2008 and 'consent to operate' on 18.10.2006. Referring to a tabular statement in the Typed Set of papers, learned counsel submitted that first respondent unit had obtained clearances under AIR (Prevention and Control of Pollution) Act and WATER (Prevention and Control of Pollution) Act as also all other requisite clearances.

8. Learned Counsel contended that the Division Bench in passing orders on 05.09.2017 had withheld passing of orders of police



protection in favour of first respondent only since as on the date thereof, consent to operate had not been obtained by the first respondent. One A.Thangapandian was the petitioner in W.P.(MD) No.1931 of 2016, while A.Ezhilvizhi was co-respondent with the appellant in W.P.(MD) No.10953 of 2017 filed by first respondent, seeking police protection on 11.06.2017. Pending the same, authorisation of the Tamil Nadu Pollution Control Board had lapsed and hence, the Division Bench, having found that consent to operate under Air (Prevention and Control of Pollution) Act, 1981 had lapsed and finding compliances effected by first respondent substantial and that basic parameters were satisfied, directed the Tamil Nadu Pollution Control Board to consider the application of the first respondent for renewal within a period of 6 weeks from the date of order. Having directed so, this Court issued orders above reproduced after observing in paragraphs 14 to 16 as follows:

"14.The petitioner in W.P(MD)No.1931 of 2016 is also permitted to give his objection on behalf of the villagers.

15.The only other question is with respect to the impact of the unit on the general public residing in the said Village. Considering the apprehension expressed by the learned counsel appearing in W.P.(MD)No.1931 of 2016, we hereby direct a fresh camp consisting of very same eight persons under the Leadership of District Medical Officer, Madurai, Madurai District, as requested by his counsel appearing for the villagers.

16.The Speciality Health Screening camp is to be conducted on 20.09.2017. The third respondent, namely the Revenue Divisional Officer, Arupukkottai is directed to give intimation of it, in the locality."

9.As petitioner in W.P.(MD) No.1931 of 2016 and others acted against the spirit of the order of the Division Bench in W.P.(MD) Nos.10957 of 2013,1931 of 2016 and 10953 of 2017 dated 05.09.2017 and indulged in unlawful acts, case in Crime No.95 of 2017 came to be registered against him and others on the file of A.Mukkulam Police Station on the complaint of Village Administrative Officer on 20.09.2017 for offences under Sections 147, 341 and 353 I.P.C. Although the appellant was a party to earlier proceedings as informed above, the ground of first respondent having not satisfied requirement of environment clearance had not been raised. If the first respondent had not obtained requisite clearance, challenge thereto would have to be made before the appropriate forum.

10.To meet the submission of learned counsel for appellant that first respondent had admitted to up-gradation of incinerator, it filed in W.P.(MD) No.20469 of 2017, learned counsel submitted that what the first respondent had done was to effect replacement of worn out machinery. Such act of first



respondent would not amount to up-gradation or modification.

11. We have considered the rival submissions.

12. We would start with the position that environmental clearance initially is to be obtained at the nascent stage of an industry and the same is to be renewed from time to time and on effecting compliances as called for. It is a safe presumption that compliances required of units commencing anew would be more rigorous than those of old. The first respondent has obtained environmental N.O.C. in the year 2005 and after the last renewal, the same is valid up to the year 2019. A co-joint reading of the notification S.O.1533 dated 14.09.2006 and S.O.1142(E) dated 17.04.2015 makes clear, as rightly contented by learned counsel for respondent, that the Bio-Medical Waste Management Unit of the first respondent falls under Category 'B' which requires no clearance of the Central Government. We also find ourselves in agreement with the submission that even without circular dated 15.01.2008, the first respondent Unit would not require environmental clearance from the Central Authority. The clarity provided by circular dated 15.01.2008, shows that the first respondent Unit would not fall within Central Ministerial Clearance category since its unit had not been listed in the EIA notification 1994 and NOC was issued in 2005 i.e. before EIA notification 2006. Consent to operate of the first respondent unit had been granted on 18.10.2006 and Plan approval and Trade License as prescribed under Section 160 of Tamilnadu Village Panchayat Act had been obtained on 28.02.2007. These necessarily must be seen as activities directly connected with the establishment of the first respondent industrial unit. Looked at from any angle, the first respondent unit does not attract any disqualification on the ground of environmental clearance.

13. In the result, the Writ Appeal stands dismissed and as a consequence the direction of the learned Single Judge to afford Police Protection to the first respondent shall hold good. No costs. Consequently, connected Miscellaneous Petition also stands dismissed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.



2.The Superintendent of Police,
Virudhunagar Town and District.

3.The Deputy Superintendent of Police,
Thiruchuli Taluk,
Virudhunagar Town and District.

4.The Inspector of Police,
A.Mukkulam Police Station,
Tiruchuli Taluk,
Virudhunagar District.

5.The Tamilnadu Pollution Control Board,
Rep. by the District Environmental Engineer,
TNPCB,
Virudhunagar Town and District.

+ 1 cc TO Mr.G.Prabhu Rajadurai , Advocate in SR No. 62440
+ 1 cc TO Mr.N.Dilip kumar , Advocate in SR No. 62413

sj

AE/SV MMS/SAR1/15.05.2018/10P/8C

Judgment made in
W.A.(MD)No.50 of 2018
and C.M.P.(MD) No.261 of 2018
Delivered on
19.04.2018