

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.2615 of 2019
and
W.M.P.Nos.2885 and 2887 of 2019

K.K.Chinnathambi

.. Petitioner

Vs.

- 1.State Government of Tamil Nadu
Represented by
The Secretary,
Department of Environment and Forests,
Government of Tamilnadu,
Fort St. George, Chennai - 600 009.
- 2.Commissioner,
Department of Municipal Administration and Water
Supply, Government of Tamilnadu,
6th Floor, Exhilagam (Annexe Building),
Chepauk, Chennai 600005.
- 3.Chairman,
Tamilnadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600 032.
- 4.Engineer-in-Chief (Water Resources Organisation)
and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai 600 005.
- 5.The District Collector,
State Highway 96,
Opp. District Court,
Palayapalayam,
Erode - 638011.

6.District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Plot No.J-2 (W),
Sipcot Industrial Development Centre,
Perundural - 638 052.

7.Municipal Commissioner
Municipality,
Mysore Trunk Road,
Rangasamuthiram,
Sathiamangalam - 638 402.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondent-7 pertaining to the selection of the place for location of the Septage Treatment Plant (STP) and Sewage Pumping Station (SPS) and quash the Notice No.R.C.4444/2011/E1 dated 24.04.2017 issued by the Respondent-7 and consequently, to direct the respondents to process the representations dated 03.05.2017, 24.06.2017, 27.09.2017 and 19.03.2018 in accordance with the law on the subject including Para 41 of the District Office Manual and on the basis of proper reports on Environmental Impact Assessment and Social Impact Assessment.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Ms.E.Maragatha Sundari

For R1 : Mr.S.V.Vijay Prasanth,
Additional Government Pleader (F)

For R2, R4 and R5 : Mr.E.Manoharan
Additional Government Pleader

For R7 : Mr.Thambusamy
for Mr.B.Anand,
Government Advocate

For R3 and R6 : No Appearance.

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

The public interest litigation has been filed for a Writ of Certiorarified Mandamus, calling for the records of the Municipal Commissioner, Municipality, Mysore Trunk road, Rangasamuthiram, Sathiamangalam/7th respondent herein, pertaining to the selection of place for location of the Septage Treatment Plant (STP) and Sewage Pumping Station (SPS) being installed in Sathiamangalam Municipal Area and to quash the

Notice in R.C.No.4444/2011/E1 dated 24.04.2017 and consequently, to direct the respondents to process the representations dated 03.05.2017, 24.06.2017, 27.09.2017 and 19.03.2018 in accordance with the law.

2. The petitioner is the president of the Sathiyamangalam Sutruchoozhal Neeraadhaarangal Padhukappu Koottamaippu Sangam. He is the resident of Sathiyamangalam area. According to the petitioner, a Septage Treatment Plant (STP) is proposed to be constructed within a distance of 20 from the Bhavani River and in an area which is thickly populated. According to him, despite strong public opposition, the respondents are going ahead with the construction.

3. A writ petition with a identical prayer was filed in W.P.No.9247 of 2018, Lakshmanan vs. State of Tamil Nadu, represented by its Principal Secretary, Environment and Forests Department, Secretariat, Fort St.George, Chennai, and the Hon'ble First Bench of this Court, disposed of the writ petition on 20.04.2018, observing as under:-

"This writ petition, purportedly in public interest, has been filed praying for a writ of mandamus directing the respondents to shift a proposed Sewerage Treatment Plant from Kottuveerampalayam, RMP Nagar in Sathiyamangalam Taluk, Erode District to some other place.

2. In the writ petition, it is alleged that the Sewerage Treatment Plant is being constructed in a densely populated area in contravention of the rules and regulations. It is further contended that the construction will have an adverse impact on environment as also the people of the locality. The release of harmful and poisonous gases and bacteria such as Coliform and Pathogen will pose a health hazard to the people of the village.

3. There is a vague allegation in paragraph (7) that the Sewerage Treatment Plant is being constructed in violation of principles and guidelines laid down by the National Green Tribunal. It is not specified which of the principles and guidelines have been or are being violated.

4. There is an allegation that the Bhavani Sagar Dam is already polluted by discharge of effluents and industrial sewerage and that agitations have also been staged to stop discharge of effluents into the dam. However, there is no specific averment as to how the proposed Sewerage Treatment Plant would affect the Bhavani Sagar Dam.

5. The construction of a Sewerage Treatment Plant is in itself in public interest. Needless to mention that the authorities are required to comply with all rules and regulations to prevent pollution and obtain clearance of the Pollution Control Board. This Court is informed that the Pollution Control Board has given its clearance.

6. It is not for this Court exercising jurisdiction under Article 226 of the Constitution of India to decide which site would be more suitable for setting up the Sewerage Treatment Plant. This necessarily has to be done by the Government/Municipal authorities by obtaining expert advice. The location would also depend on availability of land.

7. This Court in exercise of jurisdiction under Article 226 of the Constitution of India does not administer the country. This Court does not discharge executive functions. Public interest litigations are a relatively recent genre of litigations which dilute the concept of locus standi on the principle Ubi Jus Ibi Remedium (Where there is a wrong, there is a remedy). When the attention of the Court is drawn to infringement of the rights of a class of people who are unable to approach Court on their own, for example, the differently abled, the under privileged, children, or may be even the general public, the Court intervenes. The Court intervenes where there is any patent illegality. However, this Court cannot in a public interest litigation take over executive functions of the State. Nor can this Court sit in appeal over every administrative decision.

8. This Court is not inclined to interfere with a project of setting up a Sewerage Treatment Plant, which, as observed herein above, is in public interest. It hardly needs mention that the people living in the locality also have a right to a pollution free healthy environment. The authorities concerned shall ensure that there is no pollution or foul smell by reason of setting up of the Sewerage Treatment Plant and necessary action shall be taken, including fumigation, and/or disinfection, if necessary, to ensure that there is no spread of infection by reason of the Sewerage Treatment Plant.

The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.11058 of 2018 is

closed."

4. After the order dated 20.04.2018, was passed by the Hon'ble First Bench, a letter was sent by one Mr.K.Rangasamy, on 26.04.2018 (i.e. six days after the judgment), alleging that there is a diversion of underground sewage treatment wastages which flows and mixes directly into the Bhavani River, causing pollution. Treating this letter as information this Court initiated a Suo Motu Writ Petition No.13775 of 2018. This Bench once again examined the entire dispute and passed the following order:-

"Based on a letter dated 26.04.2018 sent by Mr.K.Rangasamy, on behalf of the public of Sathyamangalam Municipality, Erode District, addressed to the Hon'ble Chief Justice, High Court, Madras, regarding diversion of underground sewage treatment wastages which flow and mix directly into Bhavani river and thereby cause pollution, we have taken up this Suo Motu writ petition.

2. The facts in the complaint dated 26.04.2018, which form basis of the suo motu writ petition are that, in Sathyamangalam Municipality, Erode District, underground drainage project has been implemented at an estimated cost of Rs.58 Crores and its construction work is under progress. Among 27 wards situated in the Municipality, 57 thousand people are residing. More than 10 thousand houses are there. Sewage Treatment Plant for underground drainage project has been set up alongside Bhavani River, near Kottuveerampalayam Electric Crematorium and planned to discharge the water, which comes from this, directly into the river before treatment of the same. Several lakhs of people belonging to Sathyamangalam and Bhavani Municipalities are utilising Bhavani river for drinking purposes.

3. The complaint further states that for several joint drinking water projects of the Government, water is being fetched from Bhavani river. Water from Bhavani River is also used for irrigation in the areas of Thadappalli, Arakkan Kottai and Kalingarayan. Bhavani River is the heart-beat of drinking water for several lakhs of people.

4. Complaint further states that underground drainage pipes have been installed inside Bhavani River. It would affect the future generation severely. No such treatment plant should be installed alongside the river. Courts have passed

several orders protecting the rivers from pollution. Since the underground sewage wastages are being drained into Bhavani river, there is every possibility of spreading several kinds of infectious diseases. There is every danger of river water being turned into acid. The Collectors as well as the officers concerned have not paid attention to the same. As Bhavani river is territorial branch of river cauvery, there is a chance of getting affected with underground sewage wastage water, where the cauvery river would flow.

5. Complaint further states that, on behalf of the general public, they placed a request before the Municipality to ban underground sewage treatment wastages from mixing directly into Bhavani river, but they did not pay any attention to it. In order to protect Bhavani river, the court must treat this complaint petition as a public interest litigation. The court must pass an order to ban the setting up of the underground sewage treatment plant alongside the Bhavani river, immediately. The Court must take action against the District Administration, Municipality Administration, Pollution Control Board and Public Works Department to protect Bhavani river. Residents of the said Municipalities state that they are not preventing the underground drainage construction work but they prevent setting up sewage treatment plant along side of Bhavani river.

6. On behalf of 4th respondent, namely the Chief Engineer, Public Works Department, Ezhilagam, Chennai - 600 005, Thiru.S.Radhakrishnan, Executive Engineer, W.R.D. P.W.D., Bhavani Sagar Dam Division, Bhavani Sagar, has filed a counter affidavit. He has submitted that, if Sathyamangalam Municipality constructs and commissions the STP for treating the untreated sewage in accordance with the Pollution Control Board norms, such treated water alone can be discharged into the river. He further submitted that the location of STP plant is far away from any drinking water pumping scheme in the river. He further submitted that the Commissioner of Municipality, Sathyamangalam, has been instructed that regular periodical report regarding quality of water samples, post treatment has to be submitted to all the concerned departments. He further assured that if there is any breakdown/shut down of the treatment plant, water will not be discharged in Bhavani river.

7. Tmt.K.M.Sudha, Commissioner, Sathyamangalam Municipality, Sathyamangalam, has filed a separate counter affidavit stating that Thiru.K.Rangasamy has written the letter dated 26.04.2018 only at the instigation of the person who does not want the scheme to be implemented. Earlier one Lakshmanan filed W.P. No.9247 of 2018 to shift the Sewerage Treatment Plant from Kottuveerampalayam, to appropriate place thereby water sources of Bhavani River is not affected and to take all precautionary measures before discharging the effluents in any water source. The said writ petition was dismissed by this court on 20.04.2018. Hence immediately after the dismissal of the said writ petition Thiru.K.Rangasamy, the complainant, has written a letter dated 26.04.2018, which clearly shows the malafide intention and there is no public interest involved.

8. She further submitted that people of Sathyamangalam Town felt the necessity of having an underground sewage system so that they will not face any health hazard. Therefore, considering the need of people, Sathyamangalam Municipality, has passed a Resolution on 14.02.2017 to establish an underground sewerage system and sent the details of the scheme to the Secretary to Government, Public Works Department/2nd respondent, for approval. The Secretary to Government, Public Works Department/2nd respondent, by G.O. (3D) No.6 dated 02.03.2007 granted administrative sanction and approval for establishing underground sewerage system at a cost of Rs.5426 lakhs. The scheme was approved by TWAD Board and granted technical approval on 27.08.2014. Tamil Nadu Pollution Control Board gave consent on 28.02.2016 to establish the plant on or before 26.12.2018.

9. She further submitted that the sewage treatment plant is established with the latest technology. The sewerage generated by the general public is safely conveyed to treatment plant and immediately conduit system is closed and treated before sewerage stands decomposed. No harmful gases and pathogens will occur. The treatment plant proposed is latest fluidised FAB Reactor Technology, which requires minimum area of land than other conventional treatment plants.

10. Commissioner, Sathyamangalam Municipality, has further stated that they are exploring the possibility of utilising the treated sewage water for industrial/irrigation activities. The proposal

is under discussion and if fructified, major portion of the treated sewage would be sold to Industrialists or agriculturists at a concessional rate. In that event, major quantity of the sewerage would not be let in the Bhavani river. She further submitted that as per the consent letter of the Tamil Nadu Pollution Control Board, if only the treated water meets the standards imposed by them, they will not permit the sewage to be let in Bhavani river. Only after trial run and being satisfied that the sewage is treated properly, Pollution Control Board will permit letting in the sewage into Bhavani river and thus the letter dated 26.04.2018 is without merits, misconceived and premature.

11. On the averments, Mr.T.N.Rajagopalan, learned Government Pleader, has put-forth his arguments on behalf of respondents 1 to 5. On behalf of Sathyamangalam Municipality, Mr.A.S.Thambusamy, learned counsel made submissions.

12. When an earlier writ petition, W.P. No.9247 of 2018, was filed by one Mr.Lakshmanan for the same cause, on 20.04.2018, a Hon'ble Division Bench of this court, passed the following order:

" 5. The construction of a Sewerage Treatment Plant is in itself in public interest. Needless to mention that the authorities are required to comply with all rules and regulations to prevent pollution and obtain clearance of the Pollution Control Board. This Court is informed that the Pollution Control Board has given its clearance.

6. It is not for this Court exercising jurisdiction under Article 226 of the Constitution of India to decide which site would be more suitable for setting up the Sewerage Treatment Plant. This necessarily has to be done by the Government/Municipal authorities by obtaining expert advice. The location would also depend on availability of land.

7. This Court in exercise of jurisdiction under Article 226 of the Constitution of India does not administer the country. This Court does not discharge executive functions. Public interest litigations are a relatively recent genre of litigations which dilute the concept of locus standi on the principle Ubi Jus Ibi Remedium (Where there is a wrong, there is a remedy). When the attention of the Court is drawn to

infringement of the rights of a class of people who are unable to approach Court on their own, for example, the differently abled, the under privileged, children, or may be even the general public, the Court intervenes. The Court intervenes where there is any patent illegality. However, this Court cannot in a public interest litigation take over executive functions of the State. Nor can this Court sit in appeal over every administrative decision.

8. This Court is not inclined to interfere with a project of setting up a Sewerage Treatment Plant, which, as observed herein above, is in public interest. It hardly needs mention that the people living in the locality also have a right to a pollution free healthy environment. The authorities concerned shall ensure that there is no pollution or foul smell by reason of setting up of the Sewerage Treatment Plant and necessary action shall be taken, including fumigation, and/or disinfection, if necessary, to ensure that there is no spread of infection by reason of the Sewerage Treatment Plant.

The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.11058 of 2018 is closed.

13. As observed in the earlier order, construction of Sewerage Treatment Plant is itself in public interest. The authorities concerned have already taken relevant permissions/approvals/consent from statutory bodies for the proposed Sewerage Treatment Plant. From the counter affidavit of the Commissioner, Sathyamangalam Municipality, we could discern that Pollution Control Board has given its clearance. When the attention of this Court is drawn to the infringement of the rights of a class of people who are unable to approach Court on their own, for example, differently abled, the under privileged, children, or may be even the general public, the Court has intervened where there is any patent illegality. However, this Court cannot, in a public interest litigation take over executive functions of the State, nor sit in appeal over every administrative decision.

14. This Court is not inclined to interfere with a project of setting up a Sewerage Treatment Plant, which, as observed herein above, is in public interest. It hardly needs mention that the people living in the locality also have a right to

a pollution free healthy environment. The authorities concerned shall ensure that there is no pollution or foul smell by reason of setting up of the Sewerage Treatment Plant and necessary action shall be taken, including fumigation, and/or disinfection, to ensure that there is no spread of infection by the reason of establishment of the Sewerage Treatment Plant.

15. With the above observation, Suo Muto Public Interest Litigation writ petition is disposed of."

5. This is the third writ petition, against the same Sewerage Treatment Plant (STP).

6. A perusal of the order dated 28.08.2018, would show that the underground drainage project is implemented and estimated cost of Rs.58 Crores. In the earlier writ petition, it was noticed that the site has been selected after a lot of deliberations and Sathyamangalam Municipality has passed a resolution on 14.02.2017, to establish an underground sewerage system and the details of the scheme was sent to the Secretary to the Government, Public Works Department, Chennai. The Government of Tamil Nadu have passed a G.O.(3D).No.6, dated 02.06.2007, granted administrative sanction and approval for establishing an underground sewerage at a cost of Rs.5426 lakhs. The scheme was approved by the Tamil Nadu Water Supply and Drainage Board on 27.08.2014 and Tamil Nadu Pollution Control Board has given consent on 28.02.2016, to establish the plant.

7. It has been found in the earlier round of litigation that the sewerage generated by the general public is safely conveyed to the treatment plant and it has also been ensured that there is no contamination of the river. It has been found that the treatment plant is being commenced by using the latest technology.

8. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner, would contend that the plant is situated virtually inside the river. He further submitted that the site for sewerage plant has not been properly selected.

9. These issues have already been examined and two orders have been passed by this Court. The contention of the learned Senior Counsel, is that the site for Sewerage Treatment Plant, has not been properly selected, cannot now be accepted. This Court has on two earlier occasions considered the objections and negatived it. The Sewerage Treatment Plant (STP), is commissioned in public interest, the Pollution Control Board has given its clearance. Argument of the learned Senior Counsel that Tamil Nadu Pollution Control Board has not taken all the relevant factors into consideration, before granting permission,

is not accepted.

10. Instant public interest litigation, the third attempt to stay and to stop the project, cannot be accepted. For the reasons stated, the instant writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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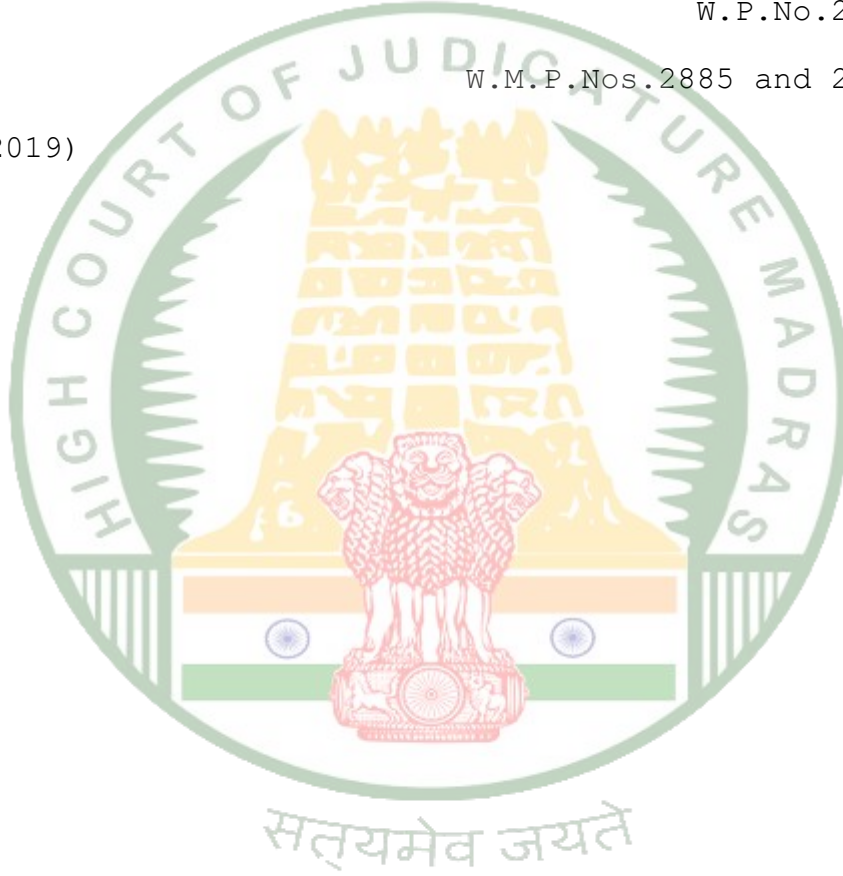
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+1cc to Mr. E.Maragatha Sundari, Advocate, S.R.No. 15303
+1cc to the Special Government Pleader(F), S.R.No. 15683
+1cc to the Government Pleader, S.R.No. 15762

W.P.No.2615 of 2019
and
W.M.P.Nos.2885 and 2887 of 2019

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