

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.6628 of 2019
and
W.M.P.Nos.7453 and 7455 of 2019

M/s.Velan Crusher,
Rep. by its Proprietor Mr.Kannaiyan
S/o Mr.Velan,
Panampatti Village,
Amman Pettai,
Melur Post, Iluppur Taluk,
Pudukottai District. Petitioner

Vs.

1. The Tamil Nadu Pollution Control Board,
Rep. by its Chairman,
No.76, Anna Salai,
Guindy, Chennai-600 032.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Pudukottai District.
3. The Chairman,
Tamil Nadu Electricity Department,
Vegappatty, Pudukottai District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 18.12.2018 passed in Appeal Nos.32 and 33/2018 by the Appellate Authority, Tamil Nadu Pollution Control Board, confirming the order dated 19.03.2018 bearing No.F.0770PDK/OS/DEE/TNPCB/22/W&A/2018 of the second respondent and quash the same and further direct the respondents 1 and 2 to grant consent to operate stone crushing unit at S.Nos.81/3B, 81/4, 81/17, 73/3C, 73/3E, 73/4, 73/3D, 81/18B, 81/18C, Panampatti Village, Iluppur Taluk, Pudukottai District, to the petitioner.

For petitioner : Mr.K.S.Viswanathan

For respondents : Mr.C.Kasirajan for RR-1 and 2
Mr.P.Gunaraj for R-3

ORDER

(The Order of the Court was made by R.Subbiah,J)

The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 18.12.2018 passed in Appeal Nos.32 and 33/2018 by the Appellate Authority, Tamil Nadu Pollution Control Board, confirming the order dated 19.03.2018 bearing No.F.0779PDK/OS/DEE/TNPCB/22/W&A/2018 of the second respondent and quash the same and further direct the respondents 1 and 2 to grant consent to operate stone crushing unit at S.Nos.81/3B, 81/4, 81/17, 73/3C, 73/3E, 73/4, 73/3D, 81/18B, 81/18C, Panampatti Village, Iluppur Taluk, Pudukottai District, to the petitioner.

2. It is the case of the petitioner-Unit that they were running the stone crushing unit at S.Nos.81/3B, 81/4, 81/17, 73/3C, 73/3E, 73/4, 73/3D, 81/18B, 81/18C, Panampatti Village, Iluppur Taluk, Pudukottai District. By a registered sale deed dated 28.04.2011 bearing Doc.No.848/2011 registered at the office of the Sub-Registrar, Anna Vasal, the petitioner purchased the property and subsequently installed the machineries, both primary and secondary crushers with adequate air and water pollution control measures. The Revenue Authority, viz., Tahsildar issued patta evidencing the possession of the petitioner over the lands and the Assistant Engineer, Tamil Nadu Electricity Board issued a Certificate certifying that the petitioner is having electricity Service Connection for carrying on stone crushing unit in the said lands. The petitioner-Unit also installed dust containment system like Zinc sheet cover at the emission sources and the dust suppression system like water sprinkler arrangement in their Unit. They have also installed adequate pollution control measures in their Unit to contain air and water pollution. The petitioner-Unit is 500 metres away from the approved habitation which is evident from the Certificate dated 27.05.2016 issued by the Tahsildar, Kadayampatti Taluk.

3. It is the further case of the petitioner that even though they obtained permission from various statutory authorities to run the stone crushing unit, the petitioner inadvertently did not apply for consent from the respondent-Tamil Nadu Pollution Control Board (TNPCB) in the year 2013. On 12.01.2018, the TNPCB

authorities inspected the Unit and issued a show cause notice as to why the Unit should not be closed, as they are running the Unit without valid consent from the TNPCB. The petitioner applied for consent from the TNPCB to run the Unit. The petitioner has made application through online on 27.01.2018 and thereafter re-submitted the same after rectifying the defects on 30.03.2018 for grant of consent both under Section 25 of the Water (Prevention and Control of Pollution) Act and Section 21 of the Air (Prevention and Control of Pollution) Act and the petitioner has also furnished all the relevant particulars and enclosed all necessary documents for grant of consent from the second respondent-TNPCB and the petitioner also paid consent fee under both the said Acts from the year 2013, as they were running the stone crushing Unit from the year 2013. After conducting inspection of the Unit, the second respondent rejected the grant of consent on 19.03.2018 by proceedings under both the said Acts on the grounds that one M/s.Selvi Industries, M/s.Sri Jeyamurugan Crusher, M/s.Sri Bagavathi Crusher and M/s.Sri Bagavathi Blue Metals are located within 1 kilometer radius from the petitioner-crushing Unit and the present habitation, viz., Panampatti colony is located at a distance of 485 meters from the stone crusher.

4. Aggrieved by the above order passed by the second respondent, the petitioner-Unit preferred appeals before the first respondent-Appellate Authority of the TNPCB, which were dismissed on 18.12.2018, against which the present Writ Petition is filed by the petitioner-Unit.

5. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner-Unit's request was rejected mainly on the ground that four crushing Units referred to above, are located within a distance of 1 Km from the petitioner-Unit and as on date, all those four stone crushing Units are either abandoned or suspended, and therefore, there cannot be any impediment for the TNPCB to grant consent to the petitioner-Unit.

6. The respondents 1 and 2/TNPCB have filed a detailed counter affidavit, wherein in paragraph 17, the status of the said four Units have been mentioned and it was indicated that the said four crusher Units are located within 1 Km radius from the petitioner-Unit and it was also indicated therein that M/s.Selvi Industries and M/s.Sri Jeyamurugan Crusher were not in operation and M/s.Sai Hridham Infraa Private Limited (formerly M/s.Sri Bagavathi Crusher) is carrying out revamping the stone crusher and it would be ready to run the Unit at any point of time and M/s.Sri Bagavathi Blue Metals is under operation at present.

7. Heard both sides and perused the materials available on record.

8. From the above details mentioned in the counter affidavit, it is seen that out of four crushing Units, the consent expired in respect of two Units and they are not in operation. In respect of the third Unit, it was renewed upto 31.03.2021 and at present, it is carrying out revamping the stone crusher and in respect of fourth Unit, the renewal of the consent is upto 31.03.2019 and it was under operation.

9. The learned counsel for the petitioner submitted that out of four Units, three Units were not in operation and the consent to run the petitioner-Unit by the TNPCB was rejected on the ground that the said four Units were located within 1 Km radius, and the ground for rejection of consent to the petitioner-Unit is not legally valid and hence, the learned counsel for the petitioner prayed to allow the Writ Petition.

10. The petitioner has filed an affidavit dated 23.04.2019 undertaking as follows:

"7. The petitioner hereby undertakes to abide by any orders that may be passed by the respondent TNPCB in the event of any of the units that have valid consent become operational once again. The petitioner prays that the respondent Board may be given liberty to consider the situation afresh and pass suitable orders in the event of any of the other units with consent become operational after affording an opportunity to the petitioner as the petitioner has made substantial investment by taking credit facilities from financial institutions."

11. While recording the abovesaid undertaking of the petitioner, the Writ Petition is allowed, quashing the impugned orders and the first and second respondents/TNPCB are directed to consider the application for grant of consent of the petitioner-Unit and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date

of receipt of a copy of this order, and after giving an opportunity of hearing to the petitioner-Unit. No Costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Chairman,
The Tamil Nadu Pollution Control Board,
No.76, Anna Salai,
Guindy, Chennai-600 032.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Pudukottai District.
3. The Chairman,
Tamil Nadu Electricity Department,
Vegappatty, Pudukottai District.

+1cc to Mr.J.Suthakar, Advocate Sr.39979
+1cc to Mr.C.Kasirajan, Advocate Sr.41076

सत्यमेव जयते

W.P.No.6628 of 2019

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srg 17/06/2019

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