

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/4/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11613 of 2019

P. Sundar Raj

... Petitioner

Vs

1. The Principal Secretary to Government
Environment and Pollution Control Department
Secretariat, Chennai 600 009.
2. The Principal Secretary/Chairman
Tamil Nadu Pollution Control Board
76 Mount Salai, Guindy
Chennai 600 032.
3. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Plot No.CP-5B SIPCOT Industrial Growth Centre
Vandaloor, Walajabad Road, Oragadam
Sriperumbudur Taluk
Kancheepuram District 603 109.
4. The District Collector
Kancheepuram District
Collectorate Compound
Vandavasi Road
Kancheepuram HO
Kancheepuram 631 501.
5. The Tahsildar
Madhuranthagam Taluk
Taluk Office Road
Maduranthagam
Tamil Nadu 603 306.
6. The Assistant Engineer
Tamil Nadu Electricity Board
Car Street, Maduranthagam
Tamil Nadu 603 306.

7. M/s. Tamil Nadu Waste Management Limited
rep. By its Head - Operations
Mr.S.Thiruppathi Raja
No.323 Diamond Dune, Level 4
Poonamallee High Road
Aminjikarai
Chennai 600 029.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents 1 to 6 to issue an order to shut down the functioning of the seventh respondent factory namely M/s. Tamil Nadu Waste Management Limited Factory situated at S.No.29/3 & 29/2 Kinnar Kandigai Pudhur Road, Kinnar Kandigal Village, Maduranthagam Taluk, Kancheepuram District 603 303.

For petitioner ... Mr.Veangai.I.Prakash Raj

For respondents ... Mr.Akhil Akbar Ali, GA
for RR.1, 4 and 5.

O R D E R

(Order of the Court was delivered by S.Manikumar,J)

Claiming himself to be a public interest litigant, Mr.P.Sundaraj, Agriculturalist, residing at Kinar Kandigai Village, Maduranthagam Taluk, Kancheepuram District, has filed a writ of mandamus, directing the respondents 1 to 6, to issue an order, to shut down the functioning of the seventh respondent factory, namely M/s. Tamil Nadu Waste Management Limited Factory, situated at S.Nos.29/3 & 29/2 Kinnar Kandigai Pudhur Road, Kinnar Kandigal Village, Maduranthagam Taluk, Kancheepuram District 603 303.

2. Supporting the prayer sought for, petitioner has contended that Tamil Nadu Waste Management Limited/seventh respondent has started a Bio-Medical Waste Management and disposal factory, in the year 2009, at the above said survey numbers, by furnishing false information in the application submitted to the Pollution Control Board, while applying for consent, under Section 21 of the Prevention of Control Act, 1981 as amended (Central Act 14/91).

3. According to the petitioner, in column No.17, regarding land use classification of the site, the seventh respondent has furnished false information, "unclassified", wherein, as per patta issued for the property - S.Nos.29/3 and 29/4, with patta No.696 issued by the Tamil Nadu Government, land has been classified as 'punja' which shows that it is an agricultural

land where such Bio-Medical Waste Management and disposal factory is located.

4. It is the further contention of the petitioner that as against column No.20, in the application submitted to the Pollution Control Board, under Sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974, as amended (Central Act 6/1974, the seventh respondent, has falsely stated that there are no specified water body nearby and the same is completely false, baseless. Village map of Kinnar Village clearly shows that Bio- Medical Waste Management and disposal factory, situated in S.Nos.29/3, 29/4, 30/2 and 31 are located near S.No.255, which is classified as "uppu-aruvu" river, which serves as water resources for thousands of people. According to the petitioner, the entire river is spoiled by the wastage being dumped in the soil and the ash being spread in the air which moves down, so close and spoils in the river and crops.

5. Relying on the medical reports of several patients, petitioner has contended that people residing in and around Kinnar Kandigai Village, where the bio-medical waste management and disposal factory is situated, are suffering from diseases. Further contention has been made that since no steps have been taken by the respondent Nos.1 to 6, intervention of this Court is required, by issuing a writ of mandamus, as prayed.

6. On the above averments Mr.Vaengai I.Prakash Raj, learned counsel for the petitioner made submissions and invited the attention of this Court to the clauses and applications filed by the seventh respondent, wherein false information is alleged to have been given.

7. Heard Mr.Vaengai I.Prakash Raj, learned counsel for the petitioner and Mr.Akhil Akbar Ali, learned Government Advocate for the respondents 1 to 6 and perused the materials available on record.

8. Form I deals with an application for consent, under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended (Central Act 14 of 1981) {See Rule 7 of the Tamil Nadu Air (Prevention and Control of Pollution) Rules, 1983. As against column No.17, in the said application, which deals with classification of the site and the authority, who had classified the land use, seventh respondent has furnished the information "Unclassified and DTCP". For brevity, column No.17 and the details furnished by the seventh respondent is reproduced:-

- a. Land use classification of the site ... Unclassified
- b. Authority which classified the land use... DTCP

9. Form No.II is the application, for consent, under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 as amended (Central Act 6 of 1974) {See Rule 26 of the Tamil Nadu Water (Prevention and Control of Pollution) Rules, 1983}. Against column No.20, details of water bodies like lakes/rivers/canals within A radius of 1 km and rivers within a radius of 5 km., seventh respondent has stated that no specified water body is nearby. For brevity, column No.20 is reproduced"-

Details of water bodies like lakes/rivers/canals within A radius of 1 km and rivers within a radius of 5 km

a.Name of the water source No specified water body nearby

10. Perusal of the applications in Form I and Form II respectively, shows that the applicant under the above acts has to make a declaration as hereunder:-

1. I certify that all the information/data supplied are true and I have not suppressed any relevant information. I am aware that furnishing incorrect information/suppression of relevant information attracts the penal action under Section 42 of Water (P &CP) Act. 1974 as amended.

2. I hereby undertake to make a fresh application for consent in case of change of either of a product/point of discharge or of the quantity of discharge or its quality.

3. I hereby undertake to abide by the directions/instructions issued by the Board from time to time.

4. I hereby undertake to apply for consent to operate/renewal of consent along with the required details 30 days prior to the expiry of consent order.

11. Though the petitioner has enclosed medical records of several patients and contended that only due to the location of bio-medical waste management and factory, at S.Nos.29/3 and 29/2, Kinnar Kandigai Pudhur Road, Kinnar Kandigai Village, Madurathagam Taluk, Kancheepuram District, residents have diseases, upon perusal of the medical records, we are not inclined to accept the said contention. Diseases said to have been acquired, due to usage of certain carcinogenic goods by the residents do not have any correlation for establishment of bio-medical waste and factory. However, perusal of the materials furnished in the typed set of papers shows that complaint of the residents has been taken note of by the District Environmental

Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur Taluk, Kancheepuram District, and that inspection of the unit has been conducted, on 7/12/2019. Following the same, unit has been directed to take immediate action on certain aspects.

12. Environmental Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur Taluk, Kancheepuram District, has also sent a letter No.DEE/TNPCB/SPR/F-1242/RS/2018, dated 4/1/2019, to the Regional Manager, Tamil Nadu Waste Management Limited, Maduranthagam Taluk, Kancheepuram District and the Regional Manager, Tamil Nadu Waste Management Limited Poonamallee High Road, Chennai 600 029, seventh respondent, to operate and maintain efficiently and continuously. For brevity, letter, dated 4/1/2019, is reproduced:-

"I invite your kind attention to the reference 1st cited, wherein Consent to Operate was issued to the unit under the provisions of Water (P & CP) Act, 1974 & Air (P & CP) Act, 1981, subject to comply with certain conditions.

Whereas, a complaint has been received regarding the Air and Water Pollution.

In this connection, the unit was inspected. During the time of inspection, the following observations were made,

1. The unit was operation.
2. ETP and APC measures provided were not operated properly.
3. The unit has not provided online system with temper proof mechanism having facilities for online callibration.
4. The unit has not uploaded the daily report in their website format given.
5. The unit has not provided the bar coding system for collection and transportation of biomedical waste.

Hence you are directed to take immediate action on the following aspects.

1. The unit shall revamp, operate and maintain the effluent treatment plant efficiently and continuously so as to satisfy the standards prescribed by the Board.
2. The unit shall make online connectivity of all the seven parameters to CARE AIR centre of TNPCB and web site of CPCB.
3. The unit shall ensure to send the plastic and glass wastes to the respective recycliers authorised by the Board.
4. The unit shall revamp the scrubbing system, operate and maintain the same efficiently and

continuously so as to adhere to the AAQ/Emission standards prescribed by the Board.

5. The facility shall ensure that the incinerator is provided with graphic computer recording devices which shall automatically and continuously monitor and record dates, time of day batch sequential number and operating parameters such as temperature in both chambers, CO₂, CO and O₂ in gaseous emission shall also be measured daily.

6. The unit shall provide the daily report in their web site format given.

7. The unit shall provide the Barcoding system immediately.

8. The unit is instructed to comply the points mentioned in the minutes of meeting held at TNPCB corporate office on 16/11/2018.

The action taken on the above shall be informed to this office within seven days from the date of receipt of this letter.

Failure to comply with the above, further action will be initiated against the unit under the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981."

13. Again the unit has been inspected, on 4/3/2019, by the Tamil Nadu Pollution Control Board. After inspection, vide I.R.No.F.SPR1242/RS/DEE/SPR/2019, dated 5/3/2019, Assistant Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur, has submitted an inspection report, which has been considered by the District Environmental Engineer, Tamil Nadu Pollution Control Board, third respondent and after giving due consideration to the details of the inspection report, and public agitation made, on 4/3/2019, against the functioning of the unit, the District Environmental Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur, has recommended for issuing of directions to the unit for closure and disconnection of power supply.

14. Learned counsel for the petitioner further submitted that though pursuant to the recommendations, electricity supply, has been discontinued, with the use of generators unit is functioning. Perusal of the material on record more particularly, the proceeding of the Pollution Control Board, shows that inspection of the seventh respondent factory has been done, on 7/12/2018. Defects have been noticed, and the seventh respondent has been directed to take immediate action, on certain aspects, stated in the letter, dated 4/1/2019 and thereafter, show cause notices have been issued to the unit,

vide, proceeding, dated 2/11/2018, under the provisions of Water and Air Acts.

15. Unit has replied for the show cause notice, in their letter, dated 9/11/2018. Subsequently, the unit has stopped its activity, due to local agitation, on 30/10/2018. Unit has filed W.P.No.29289 of 2018, seeking police protection to the factory employees, premises and vehicle of the said facility. This Court, vide order, dated 9/11/2018, directed the petitioner therein, to give a fresh representation to the Inspector of Police, seeking for police protection. Subsequently, the unit has restarted functioning, on 14/11/2018, with police protection. In the meantime, complaint has been received from the local public regarding operation of the unit. Again the unit has been inspected, on 7/12/2019 and instructed to take immediate action, on some of the aspects, vide, office letter, dated 4/1/2019, stated supra. Once again, public has made agitation, on 4/3/2019, against the functioning of the facility. The said facility was inspected, on 4/3/2019 and functional defects have been noticed. Inspection report, dated 4/3/2019, has been submitted by the Assistant Engineer, Srirperumbudur. After considering the inspection report, District Environmental Engineer, Tamil Nadu Pollution Control Board, third respondent has recommended to issue a direction to the unit for closure and disconnection of power supply. As the unit falls under the jurisdiction of Assistant Engineer/O & M/TANGEDCO/Budur, and Superintending Engineer, TANGEDCO, Chengalpattu, unit has not been disconnected.

16. From the narration of facts and the action taken by the Pollution Control Board, it could be seen that grievance of the petitioner is that the seventh respondent has suppressed certain aspects, in the applications submitted for consent, under the provisions stated supra, in particular, classification of the land for use and existence of a water body.

17. Though the learned counsel for the petitioner submitted that there cannot be any location of Bio-Medical Waste Management and disposal factory, in a agricultural property, he has not produced any material, to substantiate the same. Unit has been inspected on two occasions, dated 7/12/2018, 4/3/2019, respectively. Defects have been pointed out. Show cause notice has been issued, for which unit has replied.

18. Recommendations to disconnect the power supply has been acted upon. Contention of the petitioner that no action is

taken by the respondents 1 to 6 and therefore, a mandamus should be issued to shut down the functioning of the unit, cannot be accepted. From the material on record, it could be deduced that complaint has been acted upon and action is taken.

19. On the contention that there is falsity, in declaration, as regards classification of the land and the existence of a water body. Petitioner seemed to have sent a e-mail, to the Hon'ble Minister for Science & Technology, Earth Sciences, Environment, Forest and Climate Change, Government of India, wherein he has stated that the seventh respondent factory has been given license to operate on the river bed (River Uppar), which is just 100 meters from the factory and water effluents are released in the river, when it gets flooded. He has stated that factory is surrounded by grazing and agricultural land. Therefore, it has a direct impact, on the people's livelihood and livestock. Petitioner has further contended that people use the road, in front of the factory and constrained to breath the polluted air.

20. E-mail alleged to have been sent to the Hon'ble Governor of India is neither dated nor there is any proof of acknowledgment. Pollution Control Board has taken action on the complaints of the public and acted upon. Contention of the petitioner is that respondent factory is functioning even today, with the use of generators.

21. In the light of what we discussed above, it is open to the petitioner, to make a representation to the Principal Secretary/Chairman, Tamil Nadu Pollution Control Board, second respondent; District Environmental Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur Taluk, Kancheepuram District, third respondent and the District Collector, Kancheepuram, fourth respondent, on the aspect of classification of land, existence of water body and also the use of generators, despite the recommendation for closure and disconnection of electricity supply. If any such representation is made, Principal Secretary to Government, Environment and Pollution Control Department, Chennai; Principal Secretary/Chairman, Tamil Nadu Pollution Control Board, Chennai and District Environmental Engineer, Tamil Nadu Pollution Control Board, Kancheepuram District, respondents 1 to 3, respectively, are directed to consider the same and pass appropriate orders, on merits and in accordance with law. Principal Secretary/Chairman, Tamil Nadu Pollution Control Board, Chennai; District Environmental Engineer, Tamil Nadu Pollution Control Board, Kancheepuram District and District Collector, Kancheepuram, respondents 2 to 4, respectively, shall make inspection of the site, if required.

22. With the above directions, writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Principal Secretary to Government
Environment and Pollution Control Department
Secretariat, Chennai 600 009.
2. The Principal Secretary/Chairman
Tamil Nadu Pollution Control Board
76 Mount Salai, Guindy, Chennai 600 032.
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6. The Assistant Engineer
Tamil Nadu Electricity Board
Car Street, Maduranthagam, Tamil Nadu 603 306.

+1cc to the Government Pleader, S.R.No.37108

Writ Petition No.11613 of 2019

SVI (CO)
CS/29/04/2019