

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.16940, 16947, 16951, 16953, 16957 and 16961 of 2019
and
W.M.P.Nos.16512, 16514, 16516, 16517, 16520 and 16524 of 2019

M/s.K.N.S.Blue Metals,
Rep. by its Proprietor,
Mr.N.Subramani,
S.F.No.77/10,
Keerapakkama Village,
Chengalpattu Taluk,
Kancheepuram District. .. Petitioner in W.P.No.16940 of 2019

M/s.M.R.S.Blue Metals Unit-I,
Rep. by its Proprietor,
Mr.S.Nagarathinam,
S.F.No.79/1B, Keerapakkam Village,
Chengalpattu Taluk,
Kancheepuram District. ... Petitioner in W.P.No.16947 of 2019

M/s.M.R.S.Blue Metals Unit-II
(formerly SGP Shri Enterprises),
Rep. by its Proprietor, सत्यमेव जयते
Mr.S.Nagarathinam,
S.F.No.76/1A, 76/1B,
Keerapakkam Village,
Chengalpattu Taluk,
Kancheepuram District. ... Petitioner in W.P.No.16951 of 2019

M/s.R.K.Crushers,
Rep. by its Proprietor,
Mr.B.Vijayakumaren,
S.F.No.79/5, Keerapakkam Village,
Chengalpattu Taluk,
Kancheepuram District. .. Petitioner in W.P.No.16953 of 2019

M/s.Sri Ram Blue Metals,
Rep. by its Proprietor,
Mr.A.L.Krishnakumar,
S.F.No.77/7A, Keerapakkam Village,
Chengalpattu Taluk,
Kancheepuram District. ... Petitioner in W.P.No.16957 of 2019

M/s.Sri Sakthi Blue Metals,
Rep. by its Proprietor N.Subramani,
S.F.No.77/7B, 77/8 & 77/9,
Keerapakkam Village,
Chengalpattu Taluk,
Kancheepuram District. ... Petitioner in W.P.No.16961 of 2019

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,
Maraimalainagar.
- ... Respondents in all the Writ Petitions

Writ Petition No.16940 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.77/10, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

Writ Petition No.16947 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.79/1B, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

Writ Petition No.16951 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.76/1A, 76/1B, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

Writ Petition No.16953 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.79/5, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

Writ Petition No.16957 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.77/7A, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

Writ Petition No.16961 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to make an inspection of the petitioner-Unit situate at S.F.No.77/7B, 77/8 & 77/9, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice dated 26.04.2019 and afford a reasonable opportunity to the petitioner to submit his compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice, dated 26.04.2019.

For petitioners : Mr.V.Suthakar

For respondents : Mr.Abdul Saleem

COMMON ORDER

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

The petitioners have come forward with the present Writ Petitions praying for issuance of Writs of Mandamus to direct the respondents to make inspection of the respective units of the petitioners situated at Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District, with regard to the deficiencies pointed out in the Show Cause Notice(s) dated 26.04.2019 and afford a reasonable opportunity to the petitioner-Units to submit their compliance status before passing final orders in accordance with law, in pursuance of the Show Cause Notice(s), dated 26.04.2019.

2. It is the case of the petitioner-Units that they are running stone crushing units in the respective survey numbers at Keerapakkam Village, Chengalpet Taluk, Kancheepuram District. The petitioners' lands are classified as "non area" and there is no prohibition to carry on the stone crushing activity in the said property(ies). Apart from the petitioner-Units, there are more than 13 other stone crushers, and the same are being operated with the consent of the respondent-TNPCB. The petitioner-stone crushing industries are coming under the "Orange Category" industries as per the norms prescribed by the Tamil Nadu Pollution Control Board (TNPCB). Hence, the persons who are running the stone crushing units have to obtain consent/permission from the TNPCB both under the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act. Though the petitioner-Units have obtained consent from various authorities, they did not obtain the consent from the TNPCB till 2008 and in 2008, the respondent-TNPCB issued a closure notice stating that the petitioner-Units are being operated without valid consent from the TNPCB and did not install adequate air pollution control measures. Thereafter, the petitioner-Units and other Units installed necessary air pollution control measures. On the application made by the petitioner-Units for grant of consent both under the said Acts in the year 2008, the second respondent's officials inspected the premises and on being satisfied that the petitioner-Units are having adequate air and water pollution control measures, granted consent to operate the Units in the year 2008 under both the Acts. Initially, the consent was only for a period of one year and thereafter, it was periodically renewed once in two years and last such renewal of consent was given to the petitioner-Units on the following dates:

- (i) 09.07.2018 which is valid till 31.03.2024 (W.P.No.16940 of 2019);
- (ii) 19.06.2018 which is valid till 31.03.2024 (W.P.No.16947 of 2019);
- (iii) 28.12.2017 which is valid till 31.03.2022 (W.P.No.16951 of 2019);
- (iv) 23.06.2017 which is valid till 31.03.2021 (W.P.No.16953 of 2019);
- (v) 23.06.2017 which is valid till 31.03.2021 (W.P.No.16957 of 2019), and
- (vi) 12.07.2018 which is valid till 31.03.2024 (W.P.No.16961 of 2019).

3. It is the further case of the petitioner-Units that whenever the authorities grant renewal of consent, they used to inspect the Unit and only after satisfying that the conditions attached to the consent orders are being complied with and all pollution control measures are installed properly by the petitioner-Units, the respondent-TNPCB granted renewal of the consent periodically and the petitioner-Units had paid the consent fees to run the Units upto the valid dates noted above.

4. While so, there is no complaint whatsoever from the public right from the year of establishment of the respective Units with regard to the stone crushing activities undertaken by the petitioner-Units. While so, sometime in the year 2015, the Border Security Force (BSF) was allotted 28 acres of land adjacent to the petitioner-Units by the Government of Tamil Nadu to have their training camp, residential quarters, etc. Though the BSF had taken possession of the land, as on date, they had put up only semi-permanent structure in the said 28 acres of land, and as on date, no activity is taking place in the land allotted to the BSF.

5. The petitioners were under the bona-fide belief that running the stone crushing units by them will not be hampered due to the establishment of the training camp by BSF adjacent to their Units. The cluster of Units have put up a temporary structure on the side where the BSF was allotted lands by raising 20 feet wall to avoid any dust emission, apart from existing air pollution control measures adopted by the Units. It seems that the BSF had given a complaint to the second respondent in the month of April 2019 stating that the stone crushing units situated at Keerapakkam Village are causing serious air pollution, based on which, the respondent-Board

officials inspected the premises of the Units on 23.04.2019. Immediately on 26.04.2019, the second respondent issued cyclo-styled show cause notices to the petitioner-Units and similarly situated stone crushing units by pointing out the violation of consent conditions that are identical with regard to air pollution, viz.:

(i) The Units have not provided water sprinklers of adequate capacity to control the dust emission from the bunker, jaw crushers, vibrating screen, conveyor and stone powder storage silo.

(ii) The Units have not maintained the MS hood enclosures to the jaw crushers and vibrating screens and the same were in damaged condition.

(iii) The Units have not developed adequate green belt all around the premises for suppression of dust emission.

(iv) The Units have not provided telescope chutes at the product unloading conveyor or to prevent dust release into the atmosphere during free fall off material from height.

(v) Fine dust spreads all along the vehicular movement area and affecting the health of the nearby public.

6. It is the grievance of the petitioner-Units that even though they are having all pollution control measures and running the Units for the past several years, all of a sudden the second respondent had observed that the petitioner-Units had violated the consent conditions by not adopting the pollution control measures.

7. Hence, the petitioner-Units have given reply on 17.05.2019 stating that they would revert back to the second respondent with action taken report by improving all pollution control measures, if required and submit the same on or before 31.07.2019. While so, on 30.06.2019, one M/s.G.S.Blue Metal, which is running the Unit from the year 2008 with valid consent and which has also applied for renewal of consent after its expiry, was directed to be closed by the respondent-TNPCB on the ground that they do not have valid consent and also pointed out the deficiencies with regard to the pollution control measures. Hence, the petitioner-Units apprehend that even though they are running the Units with valid consent and had installed air pollution control measures, the second respondent may pass order of closure in haste and mechanically by simply reproducing the deficiencies which are mentioned in the show cause notices.

8. A common counter affidavit is filed by the respondents questioning the maintainability of the Writ Petitions.

9. When the Writ Petitions are taken up for consideration, the learned counsel for the petitioner-Units made submissions adverting to the averments made in the affidavit filed in support of the Writ Petitions. The learned counsel for the petitioners submitted that the petitioner-Units undertake that they will shift their Units once the training camp and residential quarters of BSF have become fully operational and further undertakes that until such time, they will carry on their activities by following all pollution control measures in accordance with law.

10. It is seen that closure order of the petitioner-Units have been passed under Section 31-A of the Air (Prevention and Control of Pollution) Act (as amended) on 11.06.2019 by the first respondent including disconnection of power supply. Though the petitioner-Units have only sought for Mandamus in these Writ Petitions as stated supra, the only remedy available to the petitioner-Units is to file appeal before the appropriate authority under the said Air (Prevention and Control of Pollution) Act, (as amended). However, the petitioner-Units submitted that the said closure order of the petitioner-Units is passed during the pendency of the present Writ Petitions. It is also submitted that inspection was also conducted by the respondent-authorities before passing the closure order.

11. Though the abovesaid undertaking is given by the learned counsel for the petitioner-Units, who also submitted that the respondents may be directed to withdraw the closure order and permit the petitioner-Units to carry on their crushing activities till the training camp and residential quarters of BSF have become fully operational, we are not inclined to accept such undertaking and the said submission made by the learned counsel for the petitioner-Units, as already the closure orders have been passed in respect of the petitioner-Units, pending these Writ Petitions. Such being the case, this Court cannot direct the respondents to withdraw the closure orders and permit the petitioner-Units to run the crushing process. The proper remedy open to the petitioner-Units is to file appeal before the appropriate authority under the provisions of the Air (Prevention and Control of Pollution) Act, as amended, since the said closure order was passed under Section 31-A of the said Act. Hence, the petitioners are at liberty to file appeal before the appropriate authority under the said Act and on filing of such appeal, the appropriate authority shall dispose of such appeals on merits and in accordance with law, within a period of eight weeks from the date of filing of such appeals.

12. With the above observations/direction, the Writ Petitions are dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Chairman,
The Tamil Nadu Pollution Control Board,
No.76, Anna Salai,
Guindy,
Chennai-600 032.

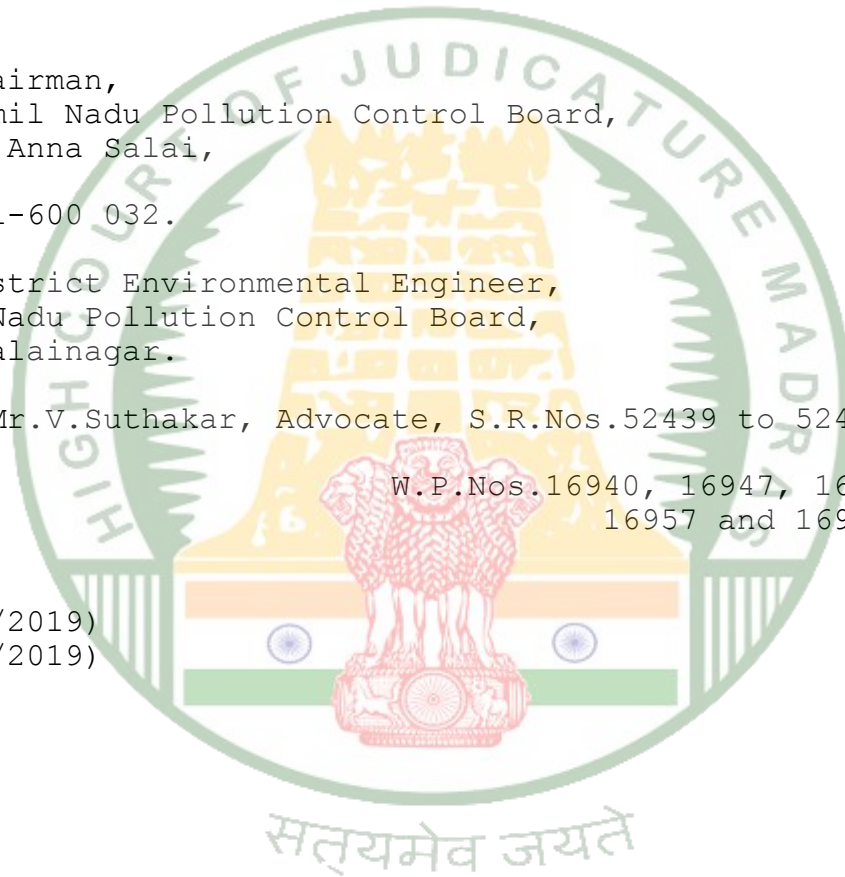
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalainagar.

+5ccs to Mr.V.Suthakar, Advocate, S.R.Nos.52439 to 52443

W.P.Nos.16940, 16947, 16951, 16953,
16957 and 16961 of 2019

GJ II(CO)

RRS (09/08/2019)
RRS (27/08/2019)



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