

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

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

W.P.No.10008 of 2017

and

W.M.P.Nos.11015 and 11016 of 2017

Gandhiya Makkal Iyakkam
No.32, Thiruvengadam Street,
Periamedu, Chennai - 600 003,
Rep. by its President. ... Petitioner

Vs.

1.The Cabinet Committee on
Economic Affairs (CCEA)
Rep. by its Secretary,
Parliament Building, New Delhi-110 001.

2.The Cabinet Secretary
Government of India
Parliament Building
New Delhi - 110 001.

3.The Secretary to Government
Ministry of Petroleum and Natural Gas
Shastri Bhavan, New Delhi - 110 003.

4.Director General of Hydro-Carbons
Ministry of Petroleum & Natural Gas
OIDB Bhawan, Plot No.2, Sector 73,
Noida- 201 301.

5.M/s.Gem Laboratories Pvt. Ltd.
Pamadi Towers, II Floor,
I Main Road, Gandhi Nagar,
Bengaluru - 560 009.
Rep. by its Managing Director.

6.The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai-009.

7.The Secretary to Government,
Department of Industries,
Government of Tamilnadu,
Secretariat, Chennai-009.

.. Respondents

(R6 and R7 are impleaded vide order dated 30/01/2019, made in WMP.No.3340/19 in WP.No.10008/17).

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Certiorari, calling for the records culminated in the 1st respondent's award/approval of Hydrocarbon Excavation Project at Neduvasal Village, Pudukottai District, Tamil Nadu, in favour of 5th respondent herein, vide Sl.No.15 in ref. CY/ONDSF/NEDUVASAL/2016 under the Discovered Small Fields Bid Round 2016, dated 15.02.2017.

For Petitioner : Ms.PG.Anjana
for R.Prabhakaran

For R1 and R4 : Mr.G.Rajagopalan,
Additional Solicitor General of India
assisted by Mr.K.S.Jeyaganeshan
(Central Government Standing
Panel Counsel)

For R5 : Mr.A.Gopinath

O R D E R

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

The instant public interest litigation has filed by Gandhiya Makkal Iyakkam, which is a registered political party, for the following prayer:-

"To call for the records culminated in the 1st respondent's award/approval of Hydrocarbon Excavation Project at Neduvasal Village, Pudukottai District, Tamil Nadu, in favour of 5th respondent herein, vide Sl.No.15 in ref. CY/ONDSF/NEDUVASAL/2016 under the Discovered Small Fields Bid Round 2016, dated 15.02.2017".

2. According to the petitioner, Government of India, have awarded, National Hydrocarbon Project to one M/s.Gem Laboratories Private Limited, Bengaluru/fifth respondent herein. The petitioner would state that Hydrocarbon is a type of chemical compound, which is made of hydrogen and carbon atoms and found in crude oil and are separated by fractional distillation(separated into different groups). He would state that such project is detrimental to soil. The petitioner would state that this project, would be set up in Neduvasal Village, Pudukottai District. It is stated that the said place is extremely fertile and by the project, fertility of the area, would be destroyed.

3. The petitioner would state that such projects, have been installed outside the country, and has resulted in

surface water contamination etc. The petitioner therefore seeks cancellation of the Neduvasal Hydrocarbon Excavation Project, which has been awarded to the fifth respondent.

4. According to the petitioner, the project has been awarded only due to political influence. Specific allegations have been made against persons, who according to the petitioner were close to M/s.Gem Laboratories Pvt. Ltd., Bangaluru, fifth respondent herein, who has been awarded with the project. Paragraphs Nos.10, 11, 12 and 13, the petitioner has contended as follows:-

"10. The said modality adopted by the Government is clear violation of the catena of decisions rendered by the Hon'ble Supreme Court, wherein the Supreme Court have held that it should be only through public tender and not through E-Bid, especially in the matter of allocation of natural resources. It is further informed that the project had been awarded due to some extraneous consideration and not through fair, transparent and open policy, where the Government seem to have allocated the said project as a sort of privileged preferential treatment to a third term sitting Karnataka State Member of Parliament Mr.G.M.Siddeshwara (Davangere Constituency), who also held the office of Union Minister of State for Civil Aviation from 26.05.2014 to 9.11.2014 and Union Minister of State of Heavy Industries and Public Enterprises from 09.11.2014 to 12.07.2016. I submit that, Mr.G.M.Siddeshwara, Member of Parliament, who had got direct connection with M/s.Gem Laboratories through his wife Mrs.G.S.Gayatri, who holds 19.66% stake as one of the Director and his brothers as per the financial statement submitted to the Registrar of Companies.

11. More particularly, Mr.G.M.Siddeshwara's brother G.M.Lingaraju was arrested by CBI for his illegal excavation of 12,500 million metric tonnes of iron ore. This raises a huge doubt the hue and cry, because, the Cabinet Committee on Economic Affairs (CCEA) had acted in direct conflict or contrast with the public law, thereby the decision taken by it itself per se void and illegal, which needs thorough probe by the Joint Parliament Committee for having allocated such project in favour of a sitting Member of Parliament's wife and siblings, who have got direct bearing in the Neduvasal project.

12. This is a clear violation of breach of privileged and misuse of public office and office of trust entrusted to the parliamentarian, where there is a clear conflict of violation of office of oath rendered before the Constitution, which

warrants his immediate disqualification. Though the decision made by CCEA could not be the subject matter of judicial review or scrutiny, but, in case of any conflict of interest or blatant violation of any of the laws, especially, the sitting M.P. wife has got direct stake in the company, and his brothers namely Mr.G.M.Prasanna Kumar and Mr.G.M.Lingaraju are the Directors of the company and consequently, such allotment is a clear violation of Article 14 of the Constitution.

13. Further, as per the doctrine of legitimate expectation and doctrine of fair play in action under Article 21 of the Constitution for free, fair and transparency, especially under the RTI Act, everything should be made public and transparent. More so, in this particular issue, though the data says that the Ministry had awarded 10.0 sp.km. to GEM Laboratories, which was started by the BJP Member of Parliament G.Mallikarjunappa, father of G.M.Siddheswara, the exact extent of land was not even disclosed and non-indication or mentioning specified area of the project itself is a violation. It is not known whether the aforesaid facts had been discussed by the CCEA headed by the Prime Minister and other members before awarding the project to M/s.GEM Laboratories."

5. Even though there are specific allegations made against Ministers and Members of Parliament etc, the petitioner has not chosen to implead them as parties and the petitioner cannot expect the Court to accept the allegations as gospel truth and pass orders against the said persons.

6. Order I Rule IX of the Civil Procedure Code deals with Mis-joinder and Non-joinder of parties. The said Rule is extracted hereunder:-

"No Suit shall be defeated by reason of the mis-joinder or non-joinder of parteis, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary Party."

7. The Hon'ble Supreme Court in Chief Conservator of Forests, Government of AP vs. Collector and others, reported in (2003) 3 SCC 472, has observed as under:-

"12. It needs to be noted here that a legal entity – a natural person or an artificial person
can sue or be sued in his/its own name in a

court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

(emphasis supplied)"

8. The petitioner is actually claiming the reliefs by making allegation, against persons. They ought to have been impleaded as parties in the writ petition. Apart from making allegations in the writ petition no documents or materials have been filed to substantiate that the project has been awarded to fifth respondent because of their position and their influence in the Government.

9. In the absence of any material, the present public interest litigation, cannot be entertained. The Hon'ble Supreme Court has time and again observed that rising trend in filing frivolous petitions styled as public interest petition and that such petition has been filed only to tarnish the image of adversaries.

10. The petitioner has also made averments that setting up of project would be prejudicial to environment. Even though the petitioner has not filed any material to support the averment, the proper forum to approach for adjudication of question of environment is the National Green Tribunal. Section 14 of the National Green Tribunal, read as under:-

"14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

11. The Hon'ble Supreme Court in Bhopal Gas Peedith Mahila Uayog Sangathan and others Vs. Union of India and others reported in (2012) 8 SCC 326, has observed as under:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned."

12. The correct forum for the petitioner for redressel of any grievance regarding environmental pollution would therefore be the National Green Tribunal, which has been specifically constituted only for adjudicating disputes regarding the environmental pollution.

13. In view of the above, instant writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.Secretary,
Cabinet Committee on
Economic Affairs (CCEA)
Parliament Building, New Delhi-110 001.

2.The Cabinet Secretary,
Government of India,
Parliament Building,
New Delhi - 110 001.

3.The Secretary to Government,
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5.The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai-009.

6.The Secretary to Government,
Department of Industries,
Government of Tamilnadu,
Secretariat, Chennai-009.

+1cc to Mr.A.Gopinath , Advocate SR.No. 19755

+1cc to Mr. R.Prabhakaran, Advocate SR.No. 19246

+1 cc to Government Pleader SR.NO. 19307

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