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W.P.(MD)Nos.18313 and 21052 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD)Nos.18313 and 21052 of 2018

and

W.M.P. (MD)Nos.16182; 21540; 22691 and 18849 of 2018

W.P. (MD)No.18313 of 2018:

S.K.Arumairaj : Petitioner

Vs.

1. The Chief Engineer,
Non Conventional Energy Sources (NCES)
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Superintending Engineer,
Non Conventional Energy Sources (NCES),
Wind Energy Development Circle,
Tamil Nadu Electricity Board,
Tirunelveli District - 627 011.
- 3 .The District Collector,
Collectorate, Thoothukudi District.
- 4.The Superintendent of Police,
O/o the Superintendent of Police,
Thoothukudi District.
- 5.The Keelakottai Village Panchayat,
rep. by the Executive Officer,
Ottapidaram Taluk, Thoothukudi District.
- 6.The Kangaikondan Village Panchayat,
rep. by the Executive Officer,
Tirunelveli Taluk, Tirunelveli District.
- 7.The Executive Engineer,
Chitaru River Division,
Public works Department, Tenkasi,
Tirunelveli District.



8.M/s. Regen Infrastructure and
Services pvt. Ltd., KRM Plaza, North Tower,
8th floor, No.2 Harrington Road, Chetpet,
Chennai - 600 031. : Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to forbear the respondent No.8 from installing the High Tension Wire Poles and Windmills in Parakiramapandian Kulam @ Indirakulam Keelakottai Village, Ottapidaram Taluk, Thoothukudi District, which belongs to the respondent No.7 and Panchayat Pond and Agricultural Patta Land in Survey Nos.49/4, 40/15, 40/6 and adjacent to Survey No.49/3 situated at Govindapuram Village, Ottapidaram Taluk., Thoothukudi District, which belongs to the respondent No.5 without following due process of law.

For Petitioner	: Mr.I.Pinaygash
For R-1 & R-2	: Mr.G.Kasinathadurai
For R-3 & R-4	: Mr.N.Shanmugaselvam Additional Government Pleader
For R5, R6 & R7	: Mr.M.Karuppasamy Government Advocate
For R-8	: Mr.M.Ajmalkhan, Senior Counsel for Mr.T.Sakthikumaran

W.P. (MD)No.21052 of 2018:

S.K.Arumairaj : Petitioner
Vs.

1. The Chief Engineer,
Non Conventional Energy Sources (NCES)
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Superintending Engineer,
Non Conventional Energy Sources (NCES),
Wind Energy Development Circle,
Tamil Nadu Electricity Board,
Tirunelveli District - 627 011.



3.The District Collector,
Collectorate, Thoothukudi District.

4.The Superintendent of Police,
O/o the Superintendent of Police,
Thoothukudi District.

5.The Block Development Officer,
O/o.the Block Development Officer,
Kayathar, Thoothukudi District.

6.The Block Development Officer,
O/o.the Block Development Officer,
Ottapidaram, Thoothukudi District.

7.The Kurumalai Village Panchayat,
rep. by the Executive Officer,
Kayathar Taluk, Thoothukudi District.

8.The Keelakottai Village Panchayat,
rep. by the Executive Officer,
Ottapidaram Taluk, Thoothukudi District.

9.M/s. Regen Infrastructure and
Services Pvt. Ltd., KRM Plaza, North Tower,
8th floor, No.2 Harrington Road, Chetpet,
Chennai - 600 031.

10.M/s.Mytrach Vayu Manjira Private Ltd.,
No.725 D, 3rd Floor, S.R.Complex,
Avinasi Road, Coimbatore,
Tamil Nadu - 641 018.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the Respondents No.9 and 10 from installing the High Tension Wire Poles and Windmills in Survey Nos.111/4, 110/4 and 110/5 at Melaparaipatti Village, Kayathar Taluk, Thoothukudi District, which belongs to the Respondent No.7 and Survey Nos.33/2, 178/1B, 30/1A and 30/1B situated at Govindapuram Village, Keelakottai Village, Ottapidaram Taluk, Thoothukudi District, which belongs to the Respondents No.8 without following the due process of law.

For Petitioner : Mr.I.Pinaygash

For R-1 & R-2 : Mr.G.Kasinathadurai

For R-3 & R-4 : Mr.N.Shanmugaselvam
Additional Government Pleader



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For R5 to R8

: Mr. M.Karuppasamy
Government Advocate

For R-9 & R-10

: Mr.M.Ajmalkhan,
Senior Counsel
for
Mr.T.Sakthikumaran

C O M M O N O R D E R

[Order of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**]

These two Writ Petitions are filed as public interest litigation petitions to restrain the respective private respondents therein from installing High Tension Wire Poles and Windmills in the respective lands.

2.The facts that are necessary for the disposal of these writ petitions are briefly, as follows:-

M/s.Regen Infrastructure and Services Pvt. Ltd., the eighth respondent in W.P.(MD)No.18313 of 2018 and the ninth respondent in W.P.(MD)No.21052 of 2018, and M/s.Mytrach Vayu Manjira Private Ltd., the tenth respondent in W.P.(MD)No.21052 of 2018 are Companies engaged in the business of installing, commissioning and operating Windmills. The said Companies have taken steps to install and erect high tension Poles and Windmills in Govindapuram Village, Ottapidaram Taluk., Thoothukudi District, as regards W.P.(MD) No.18313 of 2018 and in Melaparaipatti Village, Kayathar Taluk, Thoothukudi District, as regards W.P.(MD)No.21052 of 2018. According to the petitioner in both these writ petitions, the said activity of installing, erecting and commissioning of Windmills cannot be carried out without obtaining necessary licence from the Panchayat under Section 160 of the Tamil Nadu Panchayat Act, 1994 (the Panchayat Act). Accordingly, the petitioner filed these writ petitions to direct the official respondents to forbear the private respondents in these two writ petitions from installing the high tension wire Poles and Windmills in the respective properties.

3.The learned Senior Counsel, Mr.M.Ajmal Khan, appearing for the private respondents submitted that there was a genuine difference of opinion as to whether the installation, erection and commissioning of Windmills requires a licence under Section 160 of the said Act. In this regard, he pointed out that there are two Judgments of single benches of this Court, wherein a divergent view has been taken. In specific, he pointed out that in one of the said Judgments, a view was taken that a licence under Section 160 of the Tamil Nadu Panchayat Act, 1994 is required, whereas in the other Judgment, the Court held that such a licence is not required for the purpose of installing and commissioning Windmills. On the



said basis, the learned Senior Counsel submitted that licences had not been initially applied for. He further submitted that the said private respondents installed, erected and commissioned Windmills in the respective properties some time in the year 2018. He further pointed out that permission had also been obtained from the TANGEDCO in respect of the erection of the said Windmills and the sale of Electricity generated by such Windmills.

4. Notwithstanding the unresolved dispute as to whether licences are necessary, the learned Senior Counsel appearing for the private respondents submitted that the private respondents are ready and willing to submit necessary applications for licence under Section 160 of the said Act. He further submitted that in view of the fact that the Windmills were erected and commissioned as early as in the year 2018, the private respondents should be permitted to operate the said Windmills pending consideration of the application for licence. In this regard, he pointed out that the private respondents are incurring huge financial losses on an ongoing basis.

5. The learned counsel appearing for the writ petitioners, on the other hand, submitted that permission is required not only under Section 160 of the Panchayat Act, but also under Section 12 of the Indian Electricity Act, 2003. He has also submitted that this Court had passed an interim order restraining the respondents from operating the Windmills on account of not having the requisite licence. Consequently, he submitted that until such licence is obtained, the private respondents should not be permitted to operate the Windmills.

6. We examined the documents on record and considered the oral submissions carefully.

7. It is not in dispute that licence has not been obtained under Section 160 of the Tamil Nadu Panchayat Act, 1994. It is also clear that there is an order of interim injunction and that the private respondents are not currently operating the Windmills. In these facts and circumstances and considering the fact that the private respondents have agreed to submit necessary applications for licence under Section 160 of the said Act, without expressing any opinion as to whether such license is required or not, we propose to dispose of these writ petitions with the following directions:-

“(a). The private respondents in these two writ petitions shall submit applications for licences under Section 160 of the Tamil Nadu Panchayat Act, 1994, to the fifth respondent in the respective writ petitions, along with all relevant documents, within a period of one week from the date of receipt of a copy of this order;



(b).On receipt thereof, the said fifth respondent shall consider the said applications on merits and in accordance with law and dispose of the same by providing reasons, in case of rejection, within a period of four weeks thereafter;

(c).Until such time, the private respondents shall not operate the Windmills in accordance with the earlier interim order of this Court; and

(d).In case the fifth respondent does not pass orders on the applications submitted by the private respondents within the time limit stipulated above, it shall be deemed that the private respondents are permitted to operate the Windmills on expiry of the said time limit."

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

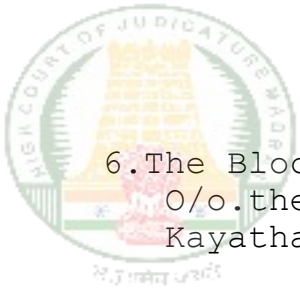
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Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Collectorate, Thoothukudi District.
- 2.The Superintendent of Police,
O/o the Superintendent of Police,
Thoothukudi District.
- 3.The Executive Officer,
Keelakottai Village Panchayat,
Ottapidaram Taluk, Thoothukudi District.
- 4.The Executive Officer,
the Kangaikondan Village Panchayat,
Tirunelveli Taluk, Tirunelveli District.
- 5.The Executive Engineer,
Chitaru River Division,
Public works Department, Tenkasi,
Tirunelveli District.



6.The Block Development Officer,
O/o.the Block Development Officer,
Kayathar, Thoothukudi District.

7.The Block Development Officer,
O/o.the Block Development Officer,
Ottapidaram, Thoothukudi District.

8.The Executive Officer,
Kurumalai Village Panchayat,
Kayathar Taluk, Thoothukudi District.

9.The Executive Officer,
Keelakottai Village Panchayat,
Ottapidaram Taluk, Thoothukudi District.

+2CC TO MR.T.SAKTHI KUMARAN, Advocate Sr. No.80714 & 80713
+1CC TO MR. G.KASINATHA DURAI, Advocate Sr. No. 80989
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 81170 & 81179

W.P. (MD)Nos.18313 and 21052 of 2018

08.08.2019

SCR(CO)

TR (13.08.2019) 7P 14C