

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 11.02.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
W.P.Nos.3332, 3333, 3334, 3336 and 3337 of 2021
and W.M.P.No.3801 of 2021

Sakthivel Poultry Farm
rep.by its Managing Partner
K.Sakthivel

.. Petitioner in all Writ Petitions

Versus

- 1.Union of India,
rep.by the Secretary to the Government of India,
Ministry of Environment, Forest and Climate Change (MoEF&CC)
Indira Paryawaran Bhawan,
Jorbagh Road, New Delhi 110 003.
- 2.The Chairman,
Central Pollution Control Board,\
Ministry of Environment & Forests,
Government of India, Parivesh Bhavan,
East Arjun Nagar,
Delhi 110 032.
- 3.The Chairman,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai 600 032.
- 4.The District Environment Engineer,
Tamil Nadu Pollution Control Board,
Kumarapalayam Town.
Namakkal District.

..Respondents in all Writ Petitions

Prayer in W.P.No.3332/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records in respect of the Environmental guidelines for poultry farms issued by the 2nd respondent in letter no.B-4032/PCI-SSI/Poultry/2015, dated 20.10.2015, quash the same and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.3333/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the 2nd respondent categorising the 'Poultry industry' as 'Green' in Table G-4, in

serial no.33 in 'Final Document on Revised Classification of Industrial Sectors dated 29.02.2016, quash the same and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.3334/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the 3rd respondent vide Board proceedings in BP NO.06, dated 02.08.2016 for revised categorisation of industrial sector, categorising the 'poultry industry' as 'Green category' in Serial No.33 and quash the same and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.3336/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration declaring the categorization of the petitioner's poultry farm as 'Green' category by the 2nd and 3rd respondents is non-est as the same is without jurisdiction since the poultry farms do find place in Schedule I to IV or VI under Rule 14 of Environment (Protection) Rules 1986 as poultry industry and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.3337/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the 4th respondent in respect of the impugned show cause notice issued under F.NA/OS/DEE/TNPCC/KMP/SCN-W/2020 dated 02.12.2020, quash the same as arbitrary, without jurisdiction and passed in gross violation of Principles of Natural Justice and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner in all Writ Petitions

: Mr.C.Manishankar

Senior Counsel assisted by
Mr.S.Senthil

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

These Writ Petitions are taken up for disposal at the admission stage itself. The petitioners before this Court are various poultry farms owners and they came forward to file this Writ Petitions, making challenge to the environmental guidelines for poultry farms issued by the respondents, vide letter dated 20.10.2015 and prays for quashment of the same.

2. Mr.C.Manishankar, learned Senior Counsel appearing for the petitioners has drawn the attention of this Court to the communication dated 20.10.2015, issued by the 2nd respondent, wherein guidelines have been framed for poultry farms.

3. In terms of the said guidelines, various measures have been provided in the form of environmental guidelines for running a poultry farm and it is the submission of the learned Senior Counsel appearing for the petitioners, on instructions, that the petitioners-poultry Farms comply with most of the conditions. The primordial challenge is made to the Final Document on Revised Classification of Industrial Sector under Red, Orange, Green and White Categories, February 29, 2016, issued by the 2nd respondent. It is the submission of the learned Senior Counsel appearing for the petitioner-farm by drawing the attention of this Court to Table G-4:Final List of Green Category of Industrial Section and admittedly as per Serial No.33 and Original S.I.No.68, Poultry, Hatchery and Piggery farms are coming under the Green Category of Industrial Sectors and if it is so, there cannot be any consent required from the 3rd respondent namely, the Tamil Nadu Pollution Control Board and despite that the 4th respondent has issued the impugned show cause notice dated 02.12.2020, alleging violation of the provision of Section 25 read with Section 44 of the Water (Prevention and Control of Pollution) Act, 1974.

4. In sum and substance, it is the submission of the learned Senior Counsel appearing for the petitioners that in the absence of any specific statutory provision as to the requirement on the part of the petitioners Units to obtain sanction and that apart, they also fall under Green Category and are also complied with most of the Environmental Guidelines for Poultry Farms, formulated by the 2nd respondent, the impugned show cause notice issued by the 4th respondent is per se unsustainable and before doing so, some semblance of inspection should have been caused upon them, so as to enable the petitioners - Poultry farm owners to submit their response and instead of that, straight away impugned notices came to be issued and it would also indicate the predetermination mind on the part of the 4th respondent and prays for interference.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. A reading of Statement of Objects and Reasons of the Water (Prevention and Control of Pollution) Act, 1974 would read among other things that with a view to control the pollution of rivers and streams which has assumed considerable importance and urgency in recent years as a result of increasing

industrialization and urbanization and in order to ensure that the domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment, which may result in water unsuitable for drinking purpose, the act brought for into book.

7. Section 3 of the Act speaks about the Constitution of Central Board and Section 16 of the Act speaks about Functions of Central Board. It is relevant to extract Section 18 of the Water (Prevention and Control of Pollution) Act, 1974:

'18. Powers to give directions.-

(1) In the performance of its functions under this Act-

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it: Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

[(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area

would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.]''

8. It is gathered from the materials placed that in the light of Section 18(1)(a) of the Act, the Central Board has issued guidelines of Poultry Farms, vide communication dated 20.10.2015, addressed to the Member Secretary, Punjab State Pollution Control Board and also put in place the Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White category dated 29.02.2016. In terms of Table No.G4, the Poultry, Hatchery and Piggery Units found in New S.I.No.33, Old S.I.No.68 and in the remarks column, it has been indicated that ''Obnoxious odour containing H₂S, CH₄ etc., and fugitive PM emissions''. It is not even the case of the petitioners that for running a Poultry Unit, they don't use water at all and the primordial submission made appears to be that since the Poultry Unit has been categorized as Green Unit, it is not open to the 4th respondent to insist for consent. It is relevant and profitable to extract Section 25 of the Water (Prevention and Control of Pollution) Act, 1974:

''25. Restrictions on new outlets and new discharges.-1[

(1)Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a)establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

b)bring into use any new or altered outlet for the discharge of sewage; or

(c)begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2)An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3)The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a)grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i)in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii)in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b)refuse such consent for reasons to be recorded in writing.

(5)Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have

imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.'

9. It is a well settled position of law that statutory provision has to be given a plain meaning and in the event of inconsistency by way of some Act or analogous Act, the Principle of Doctrine of Reading Down should be applied to achieve the objects of the Act. In the considered opinion of this Court, Section 25 is nothing to do with the categorization of industries as Red, Orange, Green and White categories.

10. This Court can also take judicial notice of the fact that lakhs and lakhs of chicks are breeding in poultry farms by using artificial feeds and chicks are also feeding with small quantity of water. It is also to be noted that since lakhs and lakhs of chicks are fed, the consumption of water would be more. As already pointed out, the restrictions on new outlets and discharge obligation under Section 25 of the said Act, has nothing to do with the categorization of the industries. The primordial grievance expressed by the learned Senior Counsel appearing for the petitioners Poultry Farms is that though the impugned notices issued by the 4th respondent is termed as show cause notice, predetermination of mind has already been made and if some semblance of opportunity given to the petitioners, they may be in a position to explain their stand to the 4th respondent, so as to enable them to take a call and pass appropriate orders in accordance with law.

11. In the light of the powers conferred upon the 2nd respondent, in terms of the various provisions cited above, this Court is of the considered view that the challenge made to the Central Pollution Control Board guidelines of Poultry Farms by the 2nd respondent as well as Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White Categories, February 29, 2016, would fail. It is once again to be noted that even in the Final Document, Poultry, Hatchery and Piggery, continue to be in a Green Category and hence challenge made to the guidelines issued by the respondent for Poultry Farm dated 20.10.2015, is dismissed.

12. Now coming to the challenge to the impugned show cause notice dated 02.12.2020, despatched to the 4th respondent to the petitioners, all the writ petitioners had submitted their response dated 14.12.2020, by registered post with acknowledgment due.

13. This Court, taking into consideration the above facts and circumstances, directs the 4th respondent to take note of the contents of the representation dated 14.12.2020 and give a disposal to the same in an objective manner and also in accordance with law and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the respective writ petitioners and till such time, shall defer further decision in terms of the impugned notice dated 02.12.2020.

14. In the result, these Writ Petitions are partly allowed.
No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

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To

- 1.The Secretary to the Government of India,
Union of India,
Ministry of Environment, Forest and Climate Change (MoEF&CC)
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Jorbagh Road, New Delhi 110 003.
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- 4.The District Environment Engineer,
Tamil Nadu Pollution Control Board,
Kumarapalayam Town, Namakkal District.

+5 ccs to Mr.Senthil Advocate sr8362

W.P.Nos.3332, 3333, 3334, 3336 of 2021

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