

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.Nos.4304, 4307, 4311, 4314 and 4316 of 2021
and W.M.P.No.4891 of 2021

Kumarasamy Poultry Farm
rep.by its Partner
A.Kumarasamy ... 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 Member Secretary,
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.4304/2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration declaring the categorisation of the petitioner's poultry Farm as 'Green' category by the 2nd respondent in revised classification of industrial sectors published on 29.02.2016 and by the 3rd respondent in Board Proceedings No.06, dated 02.08.2016, is non-est as the same is without jurisdiction since

the poultry farms do find place in Schedule I to IV or VI to the 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.4307/2021:- 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 4th respondent in respect of the impugned show cause notice issued under F.NA/OS/DEE/TNPCB/KMP/SCNW/2020 dated 01.12.2020, 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.

Prayer in W.P.No.4311/2021:- 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.4314/2021:- 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 section, 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.4316/2021:- 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.

For Petitioner in all Writ Petitions

: Mr.P.Paramasiva Doss

COMMON ORDER

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

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. The petitioner claims that they established a poultry farm in the year 1983 in Kalluppalayam Village and Munjanur Village of Tiruchengode Taluk, in various survey numbers and breeding of chicken has been done in an hygienic method and the areas in and around the Namakkal District have become important hub for chick manufacturing. Since the petitioners-poultry Farms comply with most of the conditions under environmental guideline, there is no need or necessity to categories the Farm under Green Category of Industrial Sectors.

3. The learned counsel appearing for the petitioner would submit that before issuing the impugned declaration, an opportunity ought to have been provided to the petitioner Farm and persons similarly placed and he further submitted that the respondents have no jurisdiction to frame any guidelines or categorization of poultry industries under Green Category as the poultry farms will not come within the preview of the Environment (Protection) Act, 1986 and prays for interference. The petitioner also made challenge 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 in Table G-4:Final List of Green Category of Industrial Section (S.No.33).

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

5. 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.

6. 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.]'

7. 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.'

8. 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.

9. 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.

10. Now coming to the challenge to the impugned show cause notice dated 01.12.2020, despatched to the 4th respondent to the petitioners, all the writ petitioners had submitted their response dated 15.12.2020, by registered post with acknowledgment due.

11. This Court, taking into consideration the above facts and circumstances, directs the 4th respondent to take note of the contents of the representation dated 15.12.2020 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 01.12.2020.

12. In the result, the Writ Petition in W.P.No.4307 of 2021, is Partly Allowed and other Writ Petitions in W.P.Nos.4304, 4311, 4314 and 4316 of 2021 are dismissed. No costs. Consequently connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS V)

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सत्यमेव जयते
Sub Assistant 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)
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.

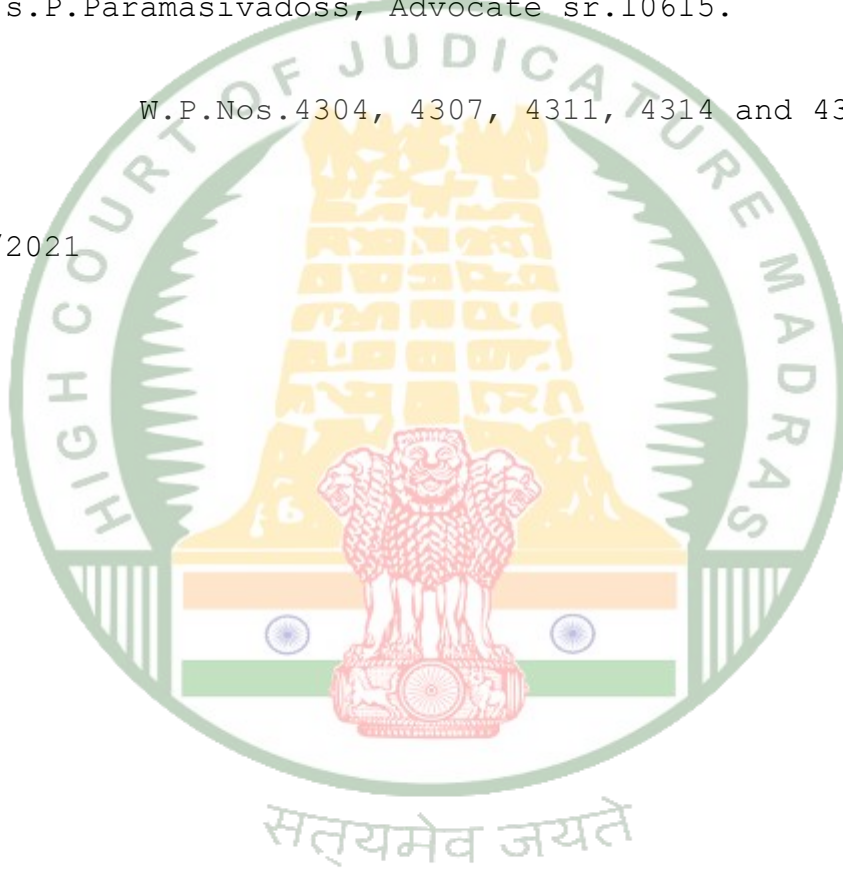
3.The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai 600 032.

4.The District Environment Engineer,
Tamil Nadu Pollution Control Board,
Kumarapalayam Town, Namakkal District.

+2cc to M/s.P.Paramasivadoss, Advocate sr.10615.

W.P.Nos.4304, 4307, 4311, 4314 and 4316 of 2021

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srg 22/03/2021



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