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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.08.2022

PRONOUNCED ON : 19.09.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.13791 of 2012
and
M.P(MD)No.2 of 2012

M/s.Sangeeth Textiles Limited,
551, Ganesapuram Post,
Annur 641 107, Coimbatore,
represented by its Director. ... Petitioner

Vs.

1.The Government of Tamilnadu,
represented by Secretary to Government,
Rural Development and Panchayat Raj
Department,
Fort St.George, Secretariat,
Chennai 600 009.

2.The District Collector,
Office of the District Collector,
Theni.

3.The Chief Engineer,
Non Conventional Energy Sources (NCES),
Tamilnadu Electricity Board,
144, Anna Salai,
Chennai 600 002.

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4.The Superintending Engineer,
Non Conventional Energy Sources (NCES),
Tamilnadu Electricity Board, Theni.

5.The President,
Sankarapuram Panchayat,
Chinnamanur,
Theni District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the proceedings of the 2nd respondent in Na.Ka.No. 42691/2011/Q5, dated 14.06.2012 and consequential proceedings of the 5th respondent, dated 11.10.2012, to quash the same.

For Petitioner : Mr.T.Ravichandran
For R1 and R2 : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.N.Muthuvijayan
Special Government Pleader
For R3 and R4 : Mr.S.Deenadhayalan
For R5 : Mr.C.Selvaraj

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O R D E R

The present writ petition has been filed challenging the proceedings of the second respondent herein under which he has proceeded to issue various guidelines for granting permission and license for the erection of windmills and for collection of charges towards granting of such licence in Theni District.

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2.According to the petitioner, they are incorporated under Indian Companies Act, 1956 and carrying on the business in the generation of wind energy by erection of wind turbine generators. The petitioners have installed wind energy generators in Tirunelveli District, after obtaining proper approval from electricity board. According to the petitioner, they have also entered into energy wheeling agreement with the electricity board and they are enjoying the energy generated in the wind bell. The petitioner has further contended that the second respondent hearin under the impugned order after referring to a judgement of this Court in W.P. (MD)No.9930 of 2011, dated 17.11.2011, has arrived at a finding that wind turbine generators would come within the definition of building under Tamil Nadu Panchayat Act, 1994 and building plan approval should be obtained from under Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999. The second respondent after having obtained opinion from the Superintending Engineer, NCES and on the basis of KVA had arrived at the approximate cost of the civil works and the approximate cost of Towers of the Wind Turbine Generators in the Tirunelveli District and has issued a circular

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under which he has elaborately laid down the procedure right from applying for building plan approval, making application, quantum of charges and tax and property tax to be paid by the windmill, after the erection of the windmill and the documents that have to be submitted for obtaining such license. The second respondent has further laid down procedure for grant of permission or license by Panchayat Union and fixed the charges to be levied by the said Panchayat Union. Thereafter, the second respondent has proceeded to direct levying of professional tax from the employees of the windmills.

3.According to the learned Counsel for the petitioner, rule making power is vested with the State Government as contemplated under section161 of the Act. The District Collector does not have any authority or power to lay elaborate guidelines in connection with section 159 or 160 of Tamil Nadu Panchayat Act and hence, the entire proceedings of the second respondent is without jurisdiction. Hence, the present writ petition.

4.The learned Additional Advocate General appearing for the first and second respondents had contended that this Court by an order, dated

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17.11.2011, in W.P.(MD)No.9930 of 2011 has categorically held that a windmill would fall within the definition of building and hence, all the legal consequences would follow. The impugned order just attempts to comply with recent judgement of this Court and the proceedings of the District Collector cannot be interfered with.

5.I have carefully considered the submissions made on the either side.

6.The second respondent herein by his proceedings, dated 01.05.2012, has infact framed the rules under section 161 of Tamil Nadu Panchayat Act, 1994. As per section 160 of Tamil Nadu Panchayat Act permission of construction of factories and installment of machinery should be obtained from the Panchayat Union Council. However, a perusal of section 161 clearly indicates that the power to frame such rules are within the exclusive domain of the Government. Especially, section 161 (1)(C) empowers the Government to prohibit or regulate the grant of permissions under section 160.

7. Hence, it is clear that the Government alone has got powers to frame rules with regard to permission or grant of license by the

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Panchayat Union for the construction of factories or installation of machinery.Hence, the procedures contemplated in the impugned order are completely without jurisdiction.

8.The impugned order refers to the judgment of this Court in W.P.(MD).No.9930 of 2011 reported ***in (2012) 3 MLJ 6 (S.Muppidathi Vs. The Chief Engineer, Tamil Nadu Electricity Board, Chennai and others)*** to draw powers to issue the impugned order. Paragraph Nos.18 and 19 of the said judgment are extracted as follows:

> "*18. Therefore, it may not be possible to contend that a Windmill which generates and transmits electricity is not involved in a manufacturing process. Nor can it be contended that a Windmill cannot be treated as a machinery. The fact that the Secretary to Government, Energy Department, sent a communication dated 6.9.2010 claiming that Windmill is not a factory, cannot be taken to be an authoritative pronouncement of the law on the point. The fact that hundreds of Windmills have been established without any such permission from any of the local bodies, is also no ground to interpret the provisions of law differently. Therefore, the applicability of Section 160 of the Tamil Nadu Panchayats Act, 1994 to a Windmill, which*

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generates electricity and which is therefore a factory involved in a manufacturing process, cannot be doubted.

19. Even if it is assumed for the sake of argument that the Windmill cannot be treated as a factory or workshop, it will not escape at least the definition of the word "building", in terms of Section 2(1-A) of the Tamil Nadu Panchayats Act. It defines a building as something which includes a house, outhouse, tent, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding 2.5 meters in height) and any other structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever. Therefore, the seventh respondent ought to have obtained permission at least under the Tamil Nadu Panchayats Building Rules, 1997."

9.There cannot be any dispute that a Windmill is a factory involving a manufacturing process thereby attracting Section 160 of Tamil Nadu Panchayats Act, 1994 . The learned Single Judge of this Court has considered Section 2(1-A) of the Tamil Nadu Panchayats Act which defines a building and has arrived at a finding that a Windmill being erected with a metal would also be considered to be a building for the purposes of Tamil Nadu Panchayats Building Rules, 1997. This observation has been the basis of the present impugned order.

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10.Let us consider the various provisions of Tamil Nadu Panchayats Building Rules, 1997. A building plan approval has to be submitted under Section 4(1)(b) of the Rules as contemplated under Appendix-D. The Rules provide for the manner of flooring, room size, drainage, height of the walls and rooms, ventilation, sanitation, latrine, compound wall and rain water harvesting. Rule 32 empowers the Executive Authority to require alteration of work, in case, if it is not in accordance with the plans or specifications which has already been approved. Rule-33 provides for stoppage of work endangering human life. Rule -34 provides for demolition or alteration of building works unlawfully commenced, carried on or completed. Rule-35 provides for levy of fees by Village Panchayats granting building plan approval. Appendix-F provides for levy of fees. The maximum rates and fees that could be levied for a building plan approval is Rs.100/- per square meter or part thereof.

11.A cursory perusal of the above said provisions will make it clear that the said provisions are intended only for the purpose of a

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building which is used for human habitation or work place or a place frequented by human beings on a regular basis. There is every possibility of the Executive Authority refusing to grant building plan permission for a Windmill on the ground that rain water harvesting, toilet, ventilation, sanitation or compound wall has not been shown in the plan. A perusal of Rule 4(5) indicates that approval should not be granted for construction if electric lines are very close to the building. The Windmills are being erected/installed only for the purposes of generation of electricity and quite naturally, they are connected with electrical lines. Hence, these provisions, if applied to a Windmill will clearly result in disastrous consequences. The said provisions have not been brought to the notice of the learned Single Judge.

12.A further reading of the above said Building Rules will indicate that no specific standards are mentioned for erection of a Windmill. Unless specific standards are mentioned in the statutory rules, a Windmill generator could not seek approval for his building plan that it is as per specific Rules. The learned Single Judge of this Court in a

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judgement reported ***in 2012 (5) CTC 450 (Mad) (The President, Gangaikondan Panchayat, Tirunelveli Vs. The Chief Engineer, Chennai and others)*** in Paragraph No.15 has recorded that the Rules are yet to be framed under Section 159 of the Tamil Nadu Panchayat Act. Until such Rules are framed, the Panchayat Union cannot insist upon the Windmill owner to get license from them. No specific standards are mentioned in the statutory Rules and the Rules already framed relate only to the building meant for human occupation. When the Rules already framed do not in any way conform to the standard required for a Windmill, the question of invoking Tamil Nadu Panchayat Building Rules, 1997 does not arise.

13.The second respondent in his impugned order has invoked the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, for payment of property tax to the village panchayat. The second respondent has referred to section 172 of the Tamil Nadu Panchayat Act. Section 172 specifically refers to house tax. The definition of house is defined under section 2(14) of the Tamil Nadu Panchayat Act. Unless the building is fit for human occupation or used

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for garaging or parking bus or it is a factory or bus stand, taxes cannot be levied as contemplated under section 172. Unless section 172 could be invoked, the question of invoking Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, does not arise.

14.That apart, the second respondent has failed to note that as per rule 16 (2) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, machinery and furniture have to be excluded for the purpose of determining the annual or capital value for assessment of property tax. In the present case, except machinery nothing is available on the land. The windmill is just a standalone machinery. In such view of the matter, the stage 2 contemplated under the impugned order is also without jurisdiction.

15.The second respondent in the impugned order has also fixed the license fee for installation of Windmill. It is a settled position of law that no amount of tax or fee can be levied without the authority of law. In the present case, as stated supra, the rule making power is solely vested with the Government as contemplated under section 161 of the Tamil Nadu

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Panchayat Act. The District Collector has no jurisdiction whatsoever to fix the license fee or permission fee for the erection of any wind mill or for the establishment of any factory. Hence, the stage 3 contemplated in the impugned order is also without jurisdiction.

16.The second respondent by his impugned order has also directed the Panchayat to collect professional tax from the employees working in the windmill companies. The Panchayat is empowered to collect tax on profession to trade, calling and employment who are transacting business within the Panchayat village as contemplated under section 198-B of the Tamil Nadu Panchayat Act. Half yearly tax rates have also been specified in the table in section 198-B of the said Act. Chapter IX A of Tamil Nadu Panchayat Act exclusively deals with tax on professions. The trade, calling and employments rates specified by the second respondent herein under the impugned order are not in consonance with the table specified under section 198 B of the Act. The second respondent herein has no authority or power to enhance the rate of professional tax as contemplated under the relevant provisions. Hence,

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the stage 4 of the impugned order directing the village Panchayat for recovery of professional tax at a rate different from that of the table found in section 198-B is also without jurisdiction.

16A. The fifth respondent has isused a consequential impugned order on 11.10.2012 demanding building plan approval fee and property tax. In view of the above said discussion, the consequential order is not legally sustainable and the same is quashed.

17.Even though Tamil Nadu Panchayat Act has been enacted in the year 1994 and section 161 of the said Act empowers the Government to frame rules for the purpose of granting permission for construction of factories and installment of machinery, so far the State Government has not taken any efforts to frame any rules under section 161 of Tamil Nadu Panchayat Act. In view of the erection of various Mobile Phone Towers, Windmills and solar power plants all over the State of Tamil Nadu, it is right time that the state of Tamil Nadu immediately frame rules as contemplated under section 161 of the Tamil Nadu Panchayat Act. The

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State should also frame necessary rules for collection of property tax from the above said entities, so as to augment the income of the Panchayat/Panchayat Union. However, the Panchayats are empowered to insist upon building plan approval and property tax for the office building or security room connected with the Windmill.

18.In view of the above said discussion, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19 .09.2022

Index : Yes / No
Internet : Yes / No
Tmg/msa

To
1.The Secretary to Government,
Government of Tamilnadu,
Rural Development and Panchayat Raj
Department,
Fort St.George, Secretariat,
Chennai 600 009.

2.The District Collector,
Office of the District Collector,
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Order made in
W.P.(MD).No.13791 of 2012

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