



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.12.2021
PRONOUNCED ON : 11.01.2022
CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.19510 of 2021

and

W.M.P. (MD)Nos.16207 and 16208 of 2021

WEB COPY

Lazer

... Petitioner

vs.

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The District Environment Engineer,
Tamil Nadu Pollution Control Board.
Water Tank Road, Nagercoil,
Kanyakumari District.
- 3.The Executive Officer,
Palugal Town Panchayat,
Palugal Post, Kanyakumari District.

4.C.Alexander Joseph

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the third respondent in his proceedings in Na.Ka.No.393/2018/A1, dated 18.10.2021 and quash the same as illegal.

For Petitioner	:Mr.C.Kishore
For R1 and R3	:Mr.D.Ghandiraj, Special Government Pleader
For R2	Ms.Vijayakumari Natarajan
For R4	:Mr.L.Jeenfelix

O R D E R

This Writ Petition has been filed in the nature of Certiorari to call for the records relating to the proceedings of the third respondent in Na.Ka.No.393/2018/A1, dated 18.10.2021 and to quash the same.

2.The petitioner, Lazer, claims that he is a proprietor of "L.V.S.Cement Works" at Palugal Village, Kanyakumari District. He stated that he has been running the said small scale industry from 2014. Just opposite to his industry, the fourth respondent, C.Alexander Joseph, is running a similar business called "J.J.Cement Works". It had been stated that the petitioner had registered his



industry with the Department of Industries and Commerce, Government of Tamil Nadu on 25.08.2015. He had also enrolled with the Ministry of Micro, Small & Medium Enterprises, Government of India. He had also obtained approved trade licence.

3.The petitioner further stated that the fourth respondent had filed a public interest litigation in W.P.(MD)No.24446 of 2018 claiming that the industry of the petitioner herein is causing pollution. The Division Bench of this Court had disposed of the said Writ Petition by order, dated 12.07.2021 with a direction to the third respondent/the Executive Officer, Palugal Town Panchayat, Palugal Post, Kanyakumari District, to conduct a spot inspection of the premises of the petitioner and thereafter, to proceed further in manner known to law, if it is found that there is pollution.

4.The petitioner claims that the inspection was conducted on 17.08.2021. The second respondent had thereafter issued a show cause notice on 24.08.2021. The petitioner had replied to the same on 06.09.2021. However, the impugned notice was issued on 18.10.2021 directing the petitioner to stop the functioning of "L.V.S.Cement Works" unit within 48 hours. The Writ Petition has been filed questioning the said impugned notice.

5.A counter had been filed on behalf of the second respondent/District Environment Engineer, Tamil Nadu Pollution Control Board, Nagercoil, Kanyakumar District, wherein, it is stated that pursuant to the direction of the Division Bench of this Court in W.P.(MD)No.24446 of 2018, an inspection was conducted on 17.08.2021 in the industry of the petitioner. This inspection was conducted along with Executive Officer, Palugal Town Panchayat. It was found that the petitioner unit was in operation without obtaining consent of the Pollution Control Board. They had not provided closed shed to carry out their works and also stored the raw materials such as M.Sand, jellies in haphazard manner causing fugitive emission. It was stated that therefore show cause notices were issued under Water and Air Acts.

6.It was further stated that a similar show cause notice was issued to the unit run by the fourth respondent. The fourth respondent had replied that they had stopped their operation and that they would vacate the finished products from the site within a period of 30 days. However, the petitioner continued to function and therefore, notices had been issued to discontinue the electricity connection and to seal the unit. It was also stated that instructions were given to the Tasildar, Vilavancode Taluk to seal the unit of the petitioner. It had been stated that the Writ Petition should be dismissed.

7.Heard arguments advanced by Mr.C.Kishore, learned Counsel for the petitioner, Mr.D.Ghandiraj, learned Special Government Pleader for the third respondents, Mrs.Vijayakumari Natarajan, learned



Counsel for the second respondent Mr.L.Jeenfelix, learned Counsel for the fourth respondent.

8.The main contention of the petitioner is that he had necessary permission and registered "L.V.S.Cement Works", which is running at Pugalur Village, Kanyakumari District, with the Department of Industries and Commerce, Government of Tamil Nadu and also with the Ministry of Micro, Small & Medium Enterprises, Government of India. He had also obtained trade licence. He had forwarded an application to the second respondent/Pollution Control Board. But no such licence has been issued by the second respondent. He stated that opposite to his unit, the fourth respondent was running "J.J.Cement Works". It is claimed that out of *mala fide*, the fourth respondent had filed W.P.(MD)No.24446 of 2018 and the Division Bench of this Court had directed inspection of the unit of the petitioner. The petitioner claims that there is no pollution caused in running the unit.

9.These facts are found to be false on a perusal of the show cause notice issued pursuant to the inspection, as directed by the Division Bench of this Court and which inspection was conducted on 17.08.2021. In the show cause notice, it had been very clearly stated that the petitioner has not provided closed shed to carry out the works and had stored raw materials such as M-Sand, jellies in haphazard manner causing fugitive emission.

10.It was very clearly stated that the Pollution Control Board has not granted consent for establishing or operating the cement works unit. It had been stated that the petitioner had contravened Section 21 of Air (Prevention & Control of Pollution) Act 1981, and also Section 25 of Water (Prevention and Control of Pollution) Act, 1974. The petitioner had replied to the show cause notice, but continued to operate the unit.

11.Naturally, when the petitioner had not been granted consent by the Pollution Control Board/second respondent, the petitioner cannot claim any privilege to run an industry which would cause direct pollution to the air and water.

12.Section 21 of Air (Prevention & Control of Pollution) Act 1981, reads as follows:

"21.Restrictions on use of certain industrial plants.

1 [(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, 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 accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, 2 ***such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(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) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, 1 [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent].

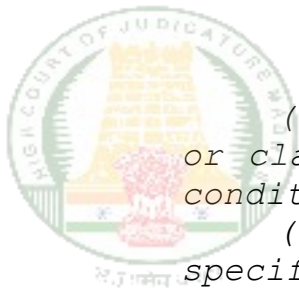
[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:-

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;



(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; and

(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant 3 *** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or (c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied."

13. Section 25 of Water (prevention and control of pollution) Act, 1974, reads as follows:

"21. POWER TO TAKE SAMPLES OF EFFLUENTS AND PROCEDURE TO BE FOLLOWED IN CONNECTION THEREWITH.

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall



not be admissible in evidence in a legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, divide the sample into two parts;

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith,--

(i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or recognised by the Central Board under section 16; and

(ii) in any other case, to the laboratory established or recognised by the State Board under section 17;

(e) on the request of the occupier or his agent, send the second container.-

(i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under subsection (1) of section 51; and

(ii) in an other case, to the laboratory established or specified under sub-section (1) of section 52.

(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then, -

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such



person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the wilful absence of the occupier or his agent; and

(b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3)."

14. Contravention of aforesaid provisions invites penal action. Show cause notices were issued to the petitioner. Opportunity was granted to the petitioner to stop polluting the air and water. Further during spot inspection, it was found that the petitioner had stored the raw materials, like jellies and M-Sand in haphazard manner causing air pollution. Further, he had not also provided closed shed to carry out their works. They have to obtain consent from the Pollution Control Board either for establishing the unit or for operating unit. The unit is a cement work unit. It is common knowledge that a cement work unit causes air pollution and also pollutes the ground level water.

15. Further, the respondents were also bound by the order of the Division Bench of this Court. They conducted an inspection of the petitioner's premises. No objections were raised by the petitioner with respect to the nature of inspection conducted. It is therefore clear that the petitioner has filed the Writ Petition more clutching at straws than out of any real intent to get relief from the Court. The entire Writ Petition is misconceived. It is speculative. The petitioner must put his unit in order. He must not cause pollution to air or water surrounding the areas. This Writ Petition is



dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022
Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The District Environment Engineer,
Tamil Nadu Pollution Control Board.
Water Tank Road, Nagercoil,
Kanyakumari District.
- 3.The Executive Officer,
Palugal Town Panchayat,
Palugal Post, Kanyakumari District.

+1 CC to M/s.C.KISHORE, Advocate (SR-1535[F] dated 12/01/2022)

+1 CC to M/s.VIJAYAKUMARI NATARAJAN, Advocate (SR-1589[F] dated 12/01/2022)

W.P.(MD)No.19510 of 2021
11.01.2022

MGJ(31.01.2022) 8P 6C