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Writ Petition Nos.23877 & 30247 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Petition Nos.23877 and 30247 of 2022
and W.M.P.Nos.22883 & 29677 of 2022**

W.P.No.23877 of 2022

Jas College of Education,
Rep. By its Principal,
Chinna Vedampatti,
Coimbatore – 641 049.

... Petitioner

Vs

1. The District Collector,
Coimbatore, Coimbatore District.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
3. Adulon Polymers,
Rep. By its Proprietor,
N.Nandakumar,
Chinnaredampetti,
Coimbatore North,
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under 226 of Constitution of India praying for the issuance of a Writ of Mandamus, direct the 1st respondent to consider the petitioner's representation dated 30.05.2022 to implement



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order passed by the first respondent in Na.Ka.No.20840/2020/E7, dated 27.01.2021 to shift the 3rd respondent company to Keranatham Village, Coimbatore District.

W.P.No.30247 of 2022

N.Nandakumar

... Petitioner

Vs.

1. The District Collector,
Coimbatore, Coimbatore District.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
No.5, Ramasamy Nagar,
Kaundanpalayam,
Coimbatore North,
Coimbatore – 641 020.
4. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.
5. V.Ganesan
6. The Correspondent,
JAS College,
No.79, Athipalayam Road,
Chinnavedampatti,
Coimbatore – 641 049.
7. The Principal,
Chaitanya Techno School,
Athipalayam Road,
Chinnavedampatti,
Coimbatore – 641 049.

... Respondents.



Writ Petition Nos.23877 & 30247 of 2022

PRAYER: Writ Petition filed under 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings issued in Na.Ka.No.20840/2020/E7 dated 27.01.2021 by the 1st respondent and quash the same.

For Petitioner : Mrs.T.Gnana Banu
in W.P.No.23877 of 2022
Mr.R.Bharath Kumar
in W.P.No.30247 of 2022

For Respondents : Mr.Vadivelu Dheenadayalan
Additional Govt. Pleader [R1 in
W.P.No.23877 of 2022 and R1
and R4 in W.P.No.30247 of 2022]
Mr.K.Magesh
Standing Counsel [R2 in
W.P.No.23877 of 2022]
Mr.R.Bharath Kumar [R3 in
W.P.No.23877 of 2022]
Mr.N.Velmurugan,
Standing Counsel [R2 in
W.P.No.30247 of 2022]
Mr.R.Gokul Krishnan,
Additional Government Pleader
for Mrs.Shanmugavalli Sekar,
Standing Counsel for TNPCB [R3
in W.P.No.30247 of 2022]
Mrs.T.Gnana Banu [R6 and R7 in
W.P.No.30247 of 2022]
R5 – Not ready in notice



COMMON ORDER

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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since these two writ petitions arise out of the same issue, where parties also same and the prayers sought for in both the writ petitions are interconnected, with the consent of learned counsel appearing for the parties, these writ petitions were heard together and are disposed of by this common order.

2. The facts in respect of W.P.No.30247 of 2022 is taken up for consideration for disposal of these writ petitions. The petitioner is an Industry called Adulon Polymers represented by its proprietor Nandakumar, who have set up this industry some time in 1995 after getting necessary permission/license from the competent authority as well as the consent from the Tamil Nadu Pollution Control Board [in short, 'TNPCB'] and the industry had been running.

3. When that being so, the fifth respondent one Ganesan had filed a writ petition before this Court in W.P.No.7775 of 2019 seeking a writ of mandamus to direct the District Collector and Commissioner of



Corporation of Coimbatore to cancel or revoke the license or permission given to the third respondent i.e., writ petitioner herein as according to him the industry is creating emission of poisonous gas, which creates air pollution in that area and causing injuries to the residents.

4. The said writ petition came to be decided by a Division Bench of this Court by order dated 15.04.2019, where the following orders have been passed:

“11. Considering the scope of the prayer sought for by the petitioner and this writ petition and taking into consideration the facts and circumstances of the case, and also taking into account the factual aspects of the matter, this Court, without going into the merits of the case, directs the first respondent District Collector to consider the said representation, dated 02.03.2018, conduct enquiry, afford an opportunity of personal hearing to the petitioner and the other residents of the concerned area, including the third respondent and pass appropriate orders and dispose of the said representation, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the matter and it is for the first respondent to decide the same at the time of



disposal of the said representation purely on merits. By way of abundant caution, this Court directs the petitioner to give a copy of the said representation, dated 02.03.2018 to the first respondent for follow-up of necessary action. On such representation being received, the first respondent shall complete the above said exercise in accordance with law, as directed above.

12. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, W.M.P. is closed.”

5. Pursuant to the said direction given by the Division Bench of this Court as stated supra, the first respondent District Collector herein had issued a notice to the petitioner industry on 09.11.2020 fixing a hearing date on 24.11.2020. On that day, the petitioner industry as well as the sixth respondent school as well as the fifth respondent, who was the writ petitioner therein attended the hearing. The District Collector enquired the matter and recorded the objection raised by each of the parties.

6. Subsequently after two days i.e., on 26.11.2020 a detailed written objection also had been submitted by the petitioner industry,



where two main objections had been raised on behalf of the industry. The first objection was that the locality in which the industry was established is an industrial zone. The second objection was that it is not only the writ petitioner industry, but several other industry in the very same locality have already been established and are functioning.

7. *Inter alia* these two main objections had been raised on behalf of the petitioner industry.

8. In the meanwhile, the petitioner industry also had approached this Court by filing a writ petition in W.P.No.9792 of 2021 challenging the notice issued by the District Collector dated 09.11.2020 and the said writ petition was pending.

9. In the meanwhile, after completing the enquiry, the first respondent District Collector passed an order on 27.01.2021, where he has given the following directions:

"எனவே, கோயம்புத்தூர் வடக்கு வட்டம்,
சின்னவேடம்பட்டி கிராமத்தில் க.த.எண்.6/2ல்
நெ.காலையில் செயல்பட்டு வரும் தி/வா.அருலன்



பாலிமர்ஸ் நிறுவனம் அருகில் உள்ள குடியிருப்புகள் மற்றும் கல்வி நிறுவனங்களுக்கு பாதிப்பு ஏற்படாதவாறு மாசுக்கட்டுப்பாட்டு வாரியத்தால் வழங்கப்பட்ட வழிகாட்டுதல்களை பின்பற்றி ஒரு வருட காலத்திற்குள் கீரணத்தம் கிராமத்திற்கு மாற்றம் செய்திட இதன்மூலம் உத்தரவிடப்படுகிறது. மேலும், மாற்றம் செய்யப்படும் இடத்தில் எவ்வித புகார்களுக்கும் இடமின்றி மாசுக்கட்டுப்பாட்டு விதிகளை பின்பற்றி தொழிற்சாலை அமைக்கப்பட வேண்டும் எனவும் உத்தரவிடப்படுகிறது."

10. It is to be noted that though this order had been passed by the District Collector on 27.01.2021, according to the learned counsel appearing for the petitioner industry it has not been served on them, therefore, the writ petition in W.P.No.9792 of 2021 filed by the industry challenging the notice issued by the District Collector dated 09.11.2020 was persuaded and it came to be decided on merits by a Division Bench of this Court on 20.04.2021, where a direction had been given in paragraph 8 of the order stating that the written objection given by the industry dated 26.11.2020 shall be considered by the District Collector and thereafter, order to be passed.



11. However, the fact remains that four months prior to the passing of the Division Bench order, the District Collector already passed an order on 27.01.2021. Be that as it may, after receipt of the order of the Collector dated 27.01.2021, the petitioner industry has chosen to file the present writ petition challenging the said order of the Collector dated 27.01.2021.

12. The sixth respondent school in the said writ petition, who is the beneficiary as per the order passed by the District Collector also has chosen to file the writ petition in W.P.No.23877 of 2022 seeking a writ of mandamus to the District Collector to implement his order dated 27.01.2021 that is how these two writ petitions came to be filed.

13. Heard Mr.R.Bharath Kumar, learned counsel appearing for the petitioner industry, who raised the point that though the hearing went on on 24.11.2020, before which, 09.11.2020 notice had been challenged in the said writ petition as referred to above, after hearing on 24.11.2020, where the oral objections had been made on behalf of the petitioner industry after two days i.e., on 26.11.2020, a written objections had been given, where the two objections as mentioned herein above had been



raised by the industry that has never been considered by the Collector as nothing has been reflected with regard to the said consideration in the order impugned dated 27.01.2021. Therefore, the learned counsel appearing for the petitioner industry would contend that these crucial objections since has been raised by the industry, which has not been considered by the District Collector, who passed an adverse order against the industry, which will have a civil consequences, therefore, it is an arbitrary exercise of power and also the principle of natural justice is violated. Hence, on these grounds the impugned order is liable to be interfered with, hence, he seeks indulgence of this Court to allow this writ petition.

14. On the other hand, Mr.Vadivelu Dheenadayalan, learned Additional Government Pleader appearing for the District Collector would contend that, there was a hearing on 24.11.2020, where admittedly the industry or the representative of the industry did appear before the District Collector and had raised their objections, which has been taken note of by the District Collector, which is reflected in the very impugned order itself. Verbatim what has been the objection given subsequently i.e., after two days i.e., on 26.11.2020 by the industry might



not have been extracted by the District Collector in the impugned order that would not *ipso facto* vitiate the validity of the order, he contended.

15. Mr.R.Gokul Krishnan, learned Standing Counsel appearing for the third respondent TNPCB has stated that, insofar as the petitioner industry is concerned, which was given the consent and it was running for some years, however, during the pendency of the writ petition, by the orders of the earlier Division Bench, TNPCB has conducted an inspection and based on the inspection, a report of the TNPCB dated 30.03.2023 has been filed before this Court.

16. Relying upon the said report, the learned Standing Counsel appearing for the third respondent TNPCB has stated that, though various technical aspects have been stated in the report, ultimately the conclusion arrived at by the TNPCB was that the Board has not considered the application submitted by the industry for extension of consent beyond 23.09.2022, such consent was expired on the date for the reason that it had been stated on behalf of the industry that within six months period they would be shifting the industry to some other place, for which arrangement have already been made. He would also submit



that in the meanwhile, i.e., for a six months period, certain precautionary measures or safety measures have to be taken, which in fact has been suggested or communicated by the Board to the Industry, therefore that is the stand taken by the TNPCB, he contended.

17. On the other hand, Mrs.T.Gnana Banu, learned Counsel appearing for the school i.e., sixth respondent herein has stated that, the school was originated from 1992, further this industry had come after few years of starting of the school. The school has been running after getting necessary approval from the concerned authorities, where number of students are studying and there has been a bad odour heavily is coming almost every time to the class rooms as well as the library, which are very adjacent to the compound wall and adjacent to the compound wall. Since the industry of the petitioner is located, this kind of odour is emanated everyday from the industry and if the odour is inhaled by the children, which will cause injuries to their health, therefore, it causes health hazards that was the reason why, the school as well as the other persons living in that area had been fighting for shifting of this industry, which are hazards in nature and it was considered by the District Collector, who passed the order, therefore, the order is to be



implemented. Hence, the learned counsel appearing for the school has contended before us that the writ petition filed by the industry is to be dismissed and the writ petition filed by the school is to be allowed.

18. We have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

19. Though a specific averments had been made in the objection dated 26.11.2020 by the industry, raising two crucial point viz., industry is located in the industrial area and it is not only the petitioner's industry but some other industries are located in the very same area itself have not been considered by the District Collector as nothing has been reflected in the impugned order, therefore, for that reason alone this Court is inclined to interfere with the order passed by the District Collector.

20. Be that as it may, insofar as the present status of the industry is concerned, as per the said report of the TNPCB, there are so many measures suggested in order to control the odour and the emission of gas or smell from the industry and in this context, the learned Standing



Counsel appearing for the TNPCB in fact has brought our notice that the consent given to the petitioner industry expired on 23.09.2022, therefore, it has not been extended for the reason that the very industry itself has stated that it would be shifted within six months period, therefore for running the industry i.e., for the six months even without consent being extended by the TNPCB certain safety measures had been suggested, by establishing such a safety measures if the industry is run that would be sufficient to run the industry for the next six months and beyond which, the industry cannot run.

21. It is further to be noted that the petitioner industry already established the very same industry for the purpose of shifting this industry in a larger extend at a different place called Sarkarsamakulam Village, Annur Taluk, Coimbatore District, where the TNPCB also after having inspected the industry seems to have given the consent.

22. Therefore, there could be no impediment for the petitioner industry to shift the present industry within six months period as they stated before the team of TNPCB at the time of inspection.



23. However, Mr.R.Bharath Kumar, learned counsel appearing for the petitioner industry has stated that, for getting extension of removal or renewal of consent from TNPCB, application has already been submitted, which is pending before the TNPCB either it should be considered and orders to be passed otherwise if there is any difficulty in passing the orders, they should state such difficulties and accordingly they can pass orders even rejecting the plea made by the petitioner industry for the renewal of the consent, but without taking any decision since they kept the application pending, the petitioner industry has to face these disadvantages, therefore, the learned counsel for the petitioner industry seeks indulgence of this Court to give a direction to that effect to the TNPCB.

24. Insofar as the running of the petitioner industry is concerned, it is a fact that beyond 23.09.2022 there has been no consent. It has also to be noted that both the Collector as well as the Pollution Control Board authorities have stated that, it was assured by the petitioner industry that they will be shifting it within six months period. In fact, six months period is over as the report dated 30.03.2023 filed by the TNPCB stated this factor and the six months period definitely has been over. Moreover,



since the TNPCB consent was expired on 23.09.2022 more than a year the industry is being run without getting the consent, therefore, in this context, some quick action must be taken by the TNPCB with regard to the fate of the industry as to whether it can be permitted to run or their permission can be rejected so that they can once for all shift to the new location, for which, they already got the consent.

25. Insofar as the District Collector orders are concerned, even though it can be interfered with because of the two reasons stated in our discussions, we feel that the order of the District Collector can be kept in abeyance for a particular period, before which the TNPCB can take consideration of the application submitted by the petitioner industry as to whether the industry is entitled to get renewal or otherwise, depending upon the outcome, the further course of action can be decided by the District Collector.

26. In view of the aforesaid facts and circumstances and the discussions herein above made, we are inclined to dispose of these writ petitions with the following order:

- ◆ That the impugned order in W.P.No.30247 of 2022 passed by the



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first respondent District Collector shall be kept in abeyance for a period of two months.

- ◆ Within the two months period from the date of receipt of a copy of this order, the third respondent TNPCB shall process the application submitted by the petitioner industry and pass orders on merits and in accordance with law.
- ◆ If the TNPCB gives consent, the District Collector order, which is impugned in the writ petition become otiose. Instead, if the TNPCB decided to reject the application for renewal of consent in view of the aforesaid facts, after such rejection within a period of one month, the petitioner either to shift the industry or to close the production.

With these directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

(R.S.K.,J.)

(G.A.M., J.)

30.11.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp



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To
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1. The District Collector,
Coimbatore, Coimbatore District.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
No.5, Ramasamy Nagar,
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R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

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