



W.P.(MD) No.123 of 2020 etc., batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) Nos.123, 126, 134, 138, 151 and 158 of 2020

and

WMP(MD) Nos.69, 70, 71, 73, 74, 75, 80, 81, 84,
85, 87, 89, 96, 97, 98, 100, 101 and 102 of 2020

W.P.(MD) No.123 of 2020:

P. Balasubramani

.. Petitioner

Vs.

- 1.The District Collector,
Office of the Collectorate,
Theni.
- 2.The Sub Collector,
Periyakulam,
Theni District.
- 3.The District Environment Engineer,
Door No.15/4, 12A/3, SAR Complex,
Boothipuram Road, Theni.
4. The Assistant Executive Engineer,
TANGEDCO,
East Sub Circle, Periyakulam.



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5. The Assistant Director,
Dept of Geological & Mining,
District Collectorate,
Theni District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent in Na.Ka.No.334/Mineral/2018 dated 05.11.2019 and the order of the second respondent in Na.Ka.No.5261/2019/A5 dated 02.12.2019 and quash the same and consequently directing the respondents not to interfere in the country brick kiln of the petitioner situated in Survey Nos.2747/2 and 2748/2A, Tamaraikulam Bit II, Periyakulam Taluk, Theni District and further permit the petitioner to peaceful running of his country brick kiln business without any disturbances caused by the respondents.

For Petitioner	:	Mr.S.Ramasundarvijayaraj
For RR1, 2 & 5	:	Mr.R.Baskaran Additional Advocate General assisted by Mr.R.Ragavendran Government Advocate
For R3	:	Ms.Vijayakumari Natarajan
For R4	:	Mr.S.Deeradhayalan Standing Counsel



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COMMON ORDER

Challenging the orders the first respondent rejecting the applications for registering the brick kiln under the Tamil Nadu Mines and Minerals Concession Rules, 1959 and the orders of the second respondent imposing penalty, the petitioners are before this Court.

2. Since the relief claimed in all the writ petitions is one and the same, a common order is being passed in these writ petitions.

3. It is the case of the respective petitioners that they have been manufacturing country made bricks as a small scale industry using manual labour. The entire manufacturing process is manually done. They have also registered the units as Micro Industry under the District Industrial Center. Most of the petitioners have been running the business for a considerable period of time.

4. All of a sudden, the third respondent had issued an instruction that cottage industry should also obtain permission from the Pollution



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Control Board under the Air (Prevention and Control of Pollution) Act, 1981 as well as the Air Pollution Act. Aggrieved by this direction, the Association of Employees and Owners of Country made Brick Kiln Industries made a joint representation to the District Collector that each and every Brick Kiln is directly or indirectly engaging not less than 50 families, which is solely depending manufacturing process of these bricks. Joint representation was given to all the other authorities as well. Meanwhile, the petitioners had made applications seeking registration under the Tamil Nadu Mines and Minerals Concession Rules, 1959 for possessing brick kiln sand which is a raw material for making and manufacturing the bricks. The petitioners had also paid statutory charges for the registration which has to be renewed once in three years. The petitioners would submit that these applications have been pending with the authorities. All of a sudden, the fifth respondent had sent a communication that there must be a chimney in the brick kiln to about a height of 10 metres, i.e., around 30 feet height and there were restrictions placed with reference to the utilisation of fire woods.



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5. The petitioners have immediately given representations to the authorities including the second and fifth respondents that they are ready to operate the brick kiln between 11 pm to 4 am when there is hardly any traffic and after this undertaking, the petitioners were permitted to operate brick kiln.

6. Meanwhile, the third and fourth respondents were insisting upon consent from the Pollution Control authority, which was mandatory under Section 21 of the Air Pollution Act. It is the contention of the petitioners that the cottage industry, being a micro industry, is exempted. However, they have given a representation that they were willing to have a small chimney within a reasonable time and undertook to construct the chimney to avoid air and smoke coming out during the night hours. They also undertook to complete the existing brick kiln unit within a period of six month and planned to shift the industry premises where a proper chimney would be constructed. They, therefore, sought for a breathing time. To the shock and surprise of the petitioners, the first respondent



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had passed orders rejecting the applications for registering the brick kiln under the Tamil Nadu Mines and Minerals Concession Rules, 1959 and the second respondent had followed it up with orders imposing penalty stating that sand deposits were available in the brick kiln site without the petitioners possessing the valid permit. The petitioners would submit that before imposing penalty, no notice had been issued, nor an enquiry had been conducted. On the contrary, it is on the basis of the orders of the first respondent rejecting the request for registration, that the second orders have come to be passed without an enquiry.

7. The first respondent has filed a counter *inter alia* contending that the clearance from the Pollution Control Board under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 was a prerequisite for running a brick manufacturing unit. The first respondent would further submit that on 15.07.2019, the Assistant Geologist from the Department of Geology, Theni District had inspected the brick kilns and the environmental clearance obtained from the Pollution Control Board has



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not be provided to him. That apart, the petitioners have also not installed the chimney as directed. The Assistant Geologist also found that despite orders rejecting the request for registration, the units had stocked brick earth in the premises which has not been covered by any valid transport permit. Therefore, the stock has to be considered as an unauthorised one. That apart, a complaint was received from the Deputy Superintendent of Police, Periyakulam stating that 17 country brick kilns, located on the edge of Periyakulam to Theni main road, were emanating dense smoke as a result of which the visibility of the road users had been affected and has resulted in accidents. Since the mandatory conditions had not been complied with, the request for registration had been rejected. As regards the unauthorized stocking of brick earth, the first respondent would submit that even after rejection of the registration, the petitioners have stored the brick earth for which there is no valid transport permit etc., and the same has been unaccounted for. The inspection having been held in the presence of the petitioners, the petitioners cannot plead ignorance about the same. He would therefore, seek to have the writ petitions dismissed.



8. Heard the learned counsel on either side.

9. As regards the first portion of the prayer regarding the quashing of the orders of the first respondent is concerned, it is admitted by the petitioners that they have not put up the chimneys, nor they have got the clearance from the Pollution Control Board, both of which are prerequisite for operating the brick kilns. Therefore, in the absence of the two prerequisites, the petitioners cannot contend that the orders of the first respondent are erroneous and without any basis. Therefore, the writ petitions are dismissed, insofar as the first relief is concerned. However, with reference to the second order imposing penalty, a mere reading of the impugned orders would clearly show that no prior notice has been issued to the petitioners and they have not been afforded opportunity to submit their case, particularly when the petitioners would submit that this mud was already in the site when they were operating the brick kilns. Whatever be the defence, an opportunity has to be given to the petitioners to make their submissions. Therefore, in the light of the violation of



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principles of natural justice, the orders passed by the second respondent are quashed. The orders dated 02.12.2019 shall be treated as notices. The petitioners shall submit their explanation within a period of two weeks from the date of receipt of a copy of this order and within a period of four weeks thereafter, the second respondent shall proceed to pass orders.

10. In the result, all the writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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