



W.A(MD)No.765 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.765 of 2012
and
M.P(MD)Nos.1&2 of 2012**

The President,
Gangaikondan Panchayat,
Gangaikondan,
Manur Panchayat Union,
Tirunelveli District.

.. Appellant/Writ Petitioner

Vs.

1.The Chief Engineer,
Non-Conventional Energy Sources (NCES),
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

2.The Executive Engineer,
Non Conventional Energy Sources,
Tamil Nadu Electricity Board,
Aringer Anna Building,
Maharaja Nagar,
Tirunelveli District.



W.A(MD)No.765 of 2012

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The Block Development Officer,
Manur Panchayat Union,
Tirunelveli District.

5.TRISHE Developers Private Ltd.,
1st Floor, Egmore Benefit Fund Society Buildings,
No.25, Flowers Road,
Chennai-600 084.

.. Respondents/
Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act,
against the order, dated 19.06.2012, made in W.P(MD)No.5000 of 2012.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.S.Deenadhayalan
Standing Counsel
for R1 & R2

: Mr.A.K.Manikkam
Special Government Pleader
for R3 to R4

: No appearance for R5



W.A(MD)No.765 of 2012

JUDGMENT

R.SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.

This appeal has been directed against the order passed by the learned Judge exercising jurisdiction under Article 226 of the Constitution of India in W.P(MD)No.5000 of 2012 dated 19.06.2012.

2. The said writ petition was filed by the appellant, who is the President of the Gangaikondan Village Panchayat comes under Manur Panchayat Union in Tirunelveli District, where the grievance of the writ petitioner was that the fifth respondent proposed to establish a windmill within the territorial jurisdiction of the writ petitioner village panchayat without the approval of the village panchayat within the meaning of Section 160 of the Tamilnadu Panchayats Act, 1994, and therefore, on that ground the writ petitioner seeking a writ of mandamus forbearing the fifth respondent from taking any steps like installing, operating, commissioning, etc., of the windmill within the writ petitioner village panchayat without getting permission from the Government of Tamilnadu in terms of the provision of the Tamilnadu Panchayats Act,



W.A(MD)No.765 of 2012

WEB COPY

3. The said writ petition having been heard was disposed of by a learned Judge by the impugned order dated 19.06.2012, wherein the main contention raised on behalf of the writ petitioner was that, the issue as to whether such windmills can be brought under the purview of Section 160 of the Panchayats Act, has been concluded by a decision of the learned Judge in the case reported in **2012 (3) MLJ 6** in the matter of ***S.Mupidathi v. Chief Engineer, Non conventional Energy Sources(NCES), Tamilnadu Electricity Board and others.*** Relying upon the said decision of the learned Judge of this Court, the writ petitioner projected his case before a learned Judge, who passed the impugned judgment.

4. However, the learned Judge, though has accepted the view taken by another learned Judge in Mupidathi case cited supra, has relied upon a Division Bench judgment of this Court in **2011 (1) CWC 521** in the matter of ***P.Ganesan v. District Collector, Tirunelveli District,*** where the stand taken by the Division Bench was that, the reading of the said



section, ie., Section 160 would show that the competent authority for giving permission for construction of the factory in the village is a Panchayat Union Council. Therefore taking clue from the said view taken by the Division Bench in the cited Judgement, the learned Judge, in the impugned judgment, has rejected the plea raised by the writ petitioner and thereby, the writ petition was dismissed.

5. Questioning the said judgment passed by the learned Judge dated 19.06.2012, Mr.S.Rajasekar, learned counsel appearing for the appellant/writ petitioner would contend that, insofar as the power of the village panchayat to deal with any such establishment of the factories are always vest with the village panchayat and every village panchayat is part and parcel of the Panchayat Union Council under which such village panchayats are annexed. Therefore, since the village panchayat is an immediate authority, who, having the knowledge over the proposed establishment of any factory like the fifth respondent's proposal to establish the windmill, the same can be looked into as to whether the entrepreneur like the fifth respondent has obtained the necessary permission from the authority concerned and if there is no such



permission was obtained by the fifth respondent, then certainly, he would not be entitled to establish the proposed windmill. Hence, the writ petitioner has got every right to seek for a prohibitive order seeking restraint against the fifth respondent from establishing the windmill that is what infact has been asked for before the writ Court for which the legal position as has been already held in Mupidathi's case cited supra had been taken on aid by the writ petitioner. However, the learned Judge, though having accepted the legal position as held in Mupidathi's case, has taken a different view that insofar as the authority, who has to consider for grant of permission or license for establishing any factory including the windmill since is vested only with the Panchayat Union Council, the prayer sought for by the writ petitioner, ie., the President of Village Panchayat cannot be granted and on that ground since the order impugned is passed by the learned Judge that is erroneous, hence, the learned counsel for the appellant writ petitioner seeks indulgence of this Court.

6. Heard Mr.S.Deenadhayalan, learned Standing counsel appearing for the respondent Tamilnadu Electricity Board representing the



TANGEDCO and also Mr.K.A.Manikkam, learned Special Government Pleader appearing for R3 and R4.

7. Though caveat has been filed on behalf of the fifth respondent when the case is taken up, there is no representation for the fifth respondent.

8. The learned Special Government Pleader would submit that, it has been consistently held that the necessary authority to look into the establishment of factories within the panchayat limit for granting permission or license is concerned, since is vested with the Panchayat Union Council and this position has already been held in the P.Ganesan's case cited supra, following which several judgments have been passed. These kind of establishment of the windmill have already been established in number of places where the role of the Village Panchayat virtually nothing as under Section 160 of the Tamilnadu Panchayats Act, the power is neither vested with the writ petitioner/appellant Village Panchayat nor its President but only the Village Panchayat Union Council, and therefore, whenever such establishment comes up for



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consideration by the Panchayat Union Council, that would be taken care of.

9. We have heard Mr.S.Deenadhayalan, learned Standing Counsel for the TANGEDCO also the other respondents herein, who would submit that the establishment of the windmill for the purpose of generating electrical energy is concerned as to whether permission to be given by the Village Panchayat or Panchayat Union Council is not the concern of the TANGEDCO, therefore, in this regard, their role is very limited, he contended.

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

11. In the impugned judgment, the legal position which has been enunciated in the judgment of Mupidathi's case cited supra has been completely agreed by the learned Judge. However, insofar as the authorities concerned as to on whom such power is vested under the



provisions of the Tamilnadu Panchayats Act, especially Section 160 of the Act concerned, that is vested only with the Panchayat Union Council, but not to any one including the writ petitioner, Village Panchayat. This is fortified by a Division Bench judgment of this Court in P.Ganesan's case cited supra [**2011 (1) CWC 521**]. Therefore, taking clue from the said view taken by the Division Bench, of course by following the same, the learned Judge refused to give the relief sought for by the writ petitioner appellant, who is the President of the Village Panchayat concerned, where the proposed windmill of the fifth respondent has to be established.

12. The said view taken by the learned Judge in rejecting the plea of the Village Panchayat President, who is the writ petitioner/appellant concerned, we feel that it is correct legal view that has been taken in fact by following a view taken by the Division Bench in the P.Ganesan case cited supra and therefore, if at all any permission or license to be given or to be obtained from, that shall be the matter to be taken care of only by the Panchayat Union Council, that is, Manur Panchayat Union Council not by the President of the Kangaikondan village panchayat. Therefore,



W.A(MD)No.765 of 2012

the plea raised by the writ petitioner/appellant before the writ Court seeking a prohibitory order against the fifth respondent from establishing the windmill without the concurrence or permission to be obtained from the writ petitioner appellant, is beyond the scope of the provisions of the Act, especially under Section 160 of the Act, in view of the pronouncement made by this Court in the said Division Bench Judgement, which has been followed by the learned Judge, of course rightly and therefore, we do not find any infirmity in the said order which is impugned herein passed by the learned Judge. Hence, it does not warrant any interference from this Court.

13. In the light of the afore-stated discussion herein, we feel that this writ appeal deserves to be rejected however with liberty to the petitioner village panchayat to bring to the notice of this development of establishment of windmill by the fifth respondent, if it is already established to the notice of the fourth respondent, who in turn can bring to the notice of the Panchayat Union Council of the fourth respondent Panchayat Union and it is for them to take action in the manner known to law.



W.A(MD)No.765 of 2012

WEB COPY

14. With this liberty and observation, this writ appeal stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K.,J.] & [K.K.R.K.,J.]

07.03.2023

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

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W.A(MD)No.765 of 2012

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W.A(MD)No.765 of 2012

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W.A(MD)No.765 of 2012
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