



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.03.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.2679 of 2023

and

WMP(MD)Nos.2439 & 2442 of 2023

M/s.Re Sustainability Health Care
Solutions Ltd.,
previously known as
Ramky Energy and Environment Ltd.,
Undurmikidakulam Village,
Mukkulam, Tiruchuli Taluk,
Virudhunagar District
rep.by its Project Head

... Petitioner

Vs.

- 1.The District Collector,
Virudhunagar District, Virudhunagar.
- 2.The Superintendent of Police,
Virudhunagar Town and District.
- 3.The Regional Divisional Officer,
Aruppukkottai, Virudhunagar District.
- 4.The Deputy Superintendent of Police,
Tiruchuli Taluk,
Virudhunagar Town & District.
- 5.The Deputy Tahsildar,
Kariapatti, Virudhunagar District.



6.The Inspector of Police,
A.Mukkulam Police Station,
Trichuli Taluk, Virudhunagar District.

7.Chellam

8.Kannadhasan

9.M.C.Rajapandian

10.A.Thangapandi

11.Shanthi

...Respondents

(R8 to R11 are impleaded vide court
order dated 22.02.2023)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to forbear the respondents from giving effect to the minutes of the peace committee meeting held on 20.01.2023 in the presence of the Zonal Deputy Tahsildar, Kariapatti and The Deputy Superintendent of Police, Trichuli and direct the official respondents 1 to 6 to ensure free access through all of the public roads leading to the petitioners' factory premise at R.S Nos.136 & 137 of Undurmikidakulam Village, Mukkulam, Trichuli Taluk, Virudhunagar District to the petitioner, its employees, vehicles, representatives, successors, assigns thereof.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.M.Lingadurai,
Special Government Pleader for R1, R3&R5

Mr.B.Thanga Aravindh,
Government Advocate (crl.side)
for R2, R4 & R6



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Mr.A.Karthigaivel for R8 and R9

Mr.G.Prabhu Rajadurai for R10

Mr.R.Suriyanarayanan for R11

ORDER

Heard the learned counsel on either side.

2.The petitioner is engaged in the business of collecting and disposing biomedical and industrial wastes. The petitioner collects biomedical wastes from as many as five Districts, namely, Madurai, Virudhunagar, Theni, Dindigul and Ramanathapuram. The petitioner is the sole agent collecting such wastes from all institutions both Government as well as private. The petitioner has located their waste treatment and disposal facility at A.Mukkulam Village in Trichuli Taluk. When crossing Mudukkuankulam village on 19.01.2023, a plastic pocket containing an amputated limb had fallen on the road. This generated considerable public outcry. The villagers of A.Mukkulam, Mudukkankulam, S.Maraikulam etc., joined together and staged road-roko. Peace committee meeting was convened on 20.01.2023 under the aegis of the Revenue and as well as the police authorities. The following decisions were taken in the said meeting :



- a) The license of the petitioner company shall be renewed only after ascertaining the views of the villagers and after passing of Grama Sabha resolutions.
- b) The company should not transport its medical waste through Mukkulam Village and instead go through an alternative route.
- c) Inspection shall be conducted by the concerned department to consider permanent closure of the unit.

This writ petition came to be filed for forbearing the respondents from giving effect to the minutes of the peace committee meeting and for directing the authorities to ensure free access of the petitioner to transport the medical waste to their factory premises at Mukkulam Village.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief sought for.

4.The first respondent has filed a counter affidavit and the learned Special Government Pleader took me through its contents. The first respondent has merely recorded the events that have led to the filing of this writ petition and has not taken any definite stand.



5.The learned counsel appearing for the private respondents strongly contended that the petitioner is a polluting industry and that they have not adhered to any safety norms. They also submitted that on account of the functioning of the petitioner unit, the villagers residing in the surrounding villages have developed several chronic diseases. It is specifically alleged that the incidence of renal failure has increased. It is also submitted that the soot generated from the premises settles on the agricultural fields and renders the land unfit for cultivation. It was also submitted that the petitioner's men and agents have been utterly negligent while transporting biomedical waste to the factory premises. The learned counsel submitted that the villagers are strongly ranged against the running of the unit and that this Court ought not to grant the relief sought for. They pressed for dismissal of this writ petition.

6.I carefully considered the rival contentions and went through the materials on record. The writ prayer is in two parts. As regards the decision taken in peace committee meeting, I need only to observe that decisions taken in a peace committee meeting lack statutory value or force. There is no statutory provision under which such meetings are held. Since the revenue authorities as well as the police authorities are responsible for



maintaining law and order whenever such occasions arise, they convene a meeting of the stakeholders and endeavour to find an amicable solution.

Such decisions will not attract the character of a binding decision having any legal consequence. No statutory authority will enforce or aid in enforcing such decisions. I can understand formal proceedings being issued after following the procedure set out in Cr.Pc for maintaining peace and order. Such is not the case here. Therefore, the question of forbearing the authorities from giving effect to the minutes of the meeting held on 20.01.2023 does not arise at all.

7.The other part of the prayer is for directing the official respondents to ensure free access through public roads leading to the factory premises in question. It is not as if the petitioner has had a free run all these years. The petitioner unit was set up way back in the year 2006. However, issues arose from 2013 onwards. The petitioner therefore had to file WP(MD)No.10957 of 2013 questioning the order passed by the local body. The petitioner has also filed 10953 of 2017. One Thangapandian also filed WP(MD)No.1931 of 2016. All the writ petitions were taken up together and disposed of vide common order dated 05.09.2017. Paragraphs 15, 16 and 17 of the order read as follows :



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“15.The only other question is with respect to the impact of the unit on the general public residing in the said Village. Considering the apprehension expressed by the learned counsel appearing in WP(MD)No.1931 of 2016, we hereby direct a fresh camp considering of very same eight persons under the Leadership of District Medical Officer, Madurai, Madurai District as requested by his counsel appearing for the villagers.

16.The Speciality Health Screening camp is to be conducted on 20.09.2017. The third respondent, namely, the Revenue Divisional Officer, Aruppukkottai is directed to give intimation of it, in the locality.

17.Accordingly, the following orders passed.

(i) W.P.(MD).No.10957 of 2013 stands allowed. The order impugned passed by the third respondent stands set aside.

(ii)W.P.(MD).No.10953 of 2017 stands disposed of by directing the second respondent to give adequate police protection as and when required, only for the purpose of maintenance and the trial of the petitioner unit alone.

(iii)Till the consent to operate is obtained from the fourth respondent, the petitioner cannot run the unit.

(iv)The District Environmental Engineer, the fourth respondent in W.P.(MD).No.10953 of 2017 is directed to pass appropriate orders within a period of six



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weeks from the date of receipt of a copy of this order in the light of the observation made earlier.

(v)The District Medical Officer, Madurai is directed to conduct the Screening Camp along with 8 officials mentioned, who participate earlier, on 20.09.2017.

(vi)The fourth respondent and the District Medical Officer are further directed to communicate their decision, both to the petitioner in W.P.(MD).No.10953 of 2017 and W.P.(MD).No.1931 of 2016.

(vii)In order to maintain transparency and fairness on Mr.Dr.A.Rengarajan, M.D., Retired Profesor of Medicine, Madurai Medical College is also directed to be added as one of the doctors in the panel, which is directed to make inspection on 20.09.2017.

(viii)the petitioner shall not be allowed to carry his vehicle for the purpose of running the unit and it is made clear that they would be permitted to use for the trial running and maintenance alone.”

The petitioner had to file one more writ petition in WP(MD) No.20649 of 2017 for directing the authorities to provide necessary police protection to the factory employees, premises and vehicles. The said writ petition was allowed vide order dated 10.11.2017. Aggrieved by the same, one Chokkar filed WA(MD)No.50 of 2018. The Hon'ble Division Bench vide order dated 19.04.2018 dismissed the writ appeal and held that the direction of



learned Single Judge to afford police protection to the petitioner company

would hold good.

8. When the petitioner's request for ensuring that they must have free access through public road leading to their factory premises is considered, the past history cannot be lost sight of. The earlier judicial orders are very much holding the field. The petitioner has been duly licensed to run the unit in question. As ready noted, the petitioner is the sole agent for collecting biomedical waste from as many as five districts. Let me visualize the situation. If all the medical wastes generated from various institutions in the five districts mentioned above remained uncollected, the situation will become intolerable. It will directly infringe the fundamental rights guaranteed under Article 21 of the Constitution of India. In the very nature of things, public interest lies in ensuring that the biomedical waste is collected and disposed of.

9. A company which is an incorporated entity though a legal person and will not qualify to be a citizen is still run essentially by individuals. The petitioner is a company registered under the Companies Act. Right to carry on business is guaranteed under Article 19(1)(g) of the



Constitution. A person driving a public vehicle can ply it through any public road subject of course to traffic regulations and legal norms. These are fundamental rights of citizens guaranteed under Article 19. It has recently been held by the Hon'ble Supreme Court that the rights under Articles 19 and 21 can find horizontal application also. In other words, they can be invoked even against private individuals. We are a democracy governed by rule of law. A mob cannot hold any person even a disliked business entity to ransom. The Hon'ble Apex Court in *Amit Sahni (Shaheen Bagh, In re) v. State (2020) 10 SCC 439* held as follows :

“16. India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights i.e. the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a



democracy such as ours lies in the same. These rights are subject to reasonable restrictions, which, inter alia, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the police authorities concerned in this regard. [See *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] Additionally, as was discussed in *Mazdoor Kisan Shakti Sangathan case* [*Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324] , each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by us to reach a solution where the rights of protestors were to be balanced with that of commuters.

17. However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said “*In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable*”), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can



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assemble whenever they choose to protest. K.K. Mathew, J. in *Himat Lal case* [*Himat Lal K. Shah v. State*, (1973) 1 SCC 227 : 1973 SCC (Cri) 280] had eloquently observed that : (SCC p. 248, para 70)

“70. ... Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.”

18. Furthermore, we live in the age of technology and the internet where social movements around the world have swiftly integrated digital connectivity into their toolkit; be it for organising, publicity or effective communication. Technology, however, in a near paradoxical manner, works to both empower digitally fuelled movements and at the same time, contributes to their apparent weaknesses. The ability to scale up quickly, for example, using digital infrastructure has empowered movements to embrace their often leaderless aspirations and evade usual restrictions of censorship; however, the flip side to this is that social media channels are often fraught with danger and can lead to the creation of highly polarised environments, which often see parallel conversations running with no constructive outcome evident. Both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of



solidarity for the women and their cause, but came with its fair share of chinks — as has been opined by the interlocutors and caused inconvenience of commuters.

19. We have, thus, no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.”

The police are meant to uphold and enforce rule of law and they cannot buckle under pressure. The rights of citizens cannot be stifled to maintain order. It is not expected of the police force or the District Administration to adopt the path of least resistance.

10. At the same time, the rights of the villagers to clean environment cannot also be lost sight of. A balance has to be necessarily struck. There are competing public interest considerations in this case. The allegation of the villagers that running of the unit is posing serious health hazards cannot be brushed aside. When the petitioner's request for renewal of license is considered, certainly, the authorities will associate the villagers in the process.



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11.The allegation of the villagers is that the writ petitioner's approach is not professional and that they are indifferent to the concerns of others. There are three stages : a)collection b)transportation and c)disposal. We are now concerned with stages 2 and 3. Perfection can be ensured at both the stages only by ensuring that the petitioner adheres to the highest standards from stage one onwards.

12.Registration of healthcare facilities should be done online and each healthcare facility should be given a login id to enable payment online. All transactions must be communicated online to ensure transparency in fee collection from healthcare facility and to ensure timely service by the waste management provider. Biomedical waste collection should be done without exception every 48 hours. The petitioner must have adequate vehicles and staff. The vehicles must conform to the requisite norms. The transportation must be done in closed vehicles. If there is overstuffing, certainly the excess collection will tumble down. In order to ensure that such occurrences as happened before are not repeated, the petitioner must adhere to the highest transportation standards. The petitioner's vehicles should not be like Corporation garbage pick up



vehicles. There must be fixed dates and timings for collection so that the healthcare facilities are prepared to hand over the waste properly. Drivers must be trained so that they pay due care to their duties to avoid hazard to general public. Barcode scanning and collection of waste from health care facilities and online tracking via app as prescribed by the pollution control guidelines in 2016 should be there so that the date and time of collection is ensured and exact weight of waste given by healthcare facility is recorded and charges collected accordingly and monitoring is easy by the regulating authorities and by the healthcare facilities online. The petitioner must provide colour coded collection bags so that segregation is properly done. If attention is paid at the collection point, at the disposal point everything will be proper.

13. Grievance cell should be instituted by the State Pollution Control Board to ensure complaints made by the general public and healthcare facilities are addressed expeditiously and name and number / website /email / WhatsApp contact of the officer incharge should be displayed at all the healthcare facilities and at around the waste disposal facility in English and local language so that everyone can place their complaints in case of non-compliance. Name of the driver and number of



the complaint cell should also be displayed in the vehicles so that drivers act with in a responsible way. The petitioner has filed an affidavit undertaking that they would strictly adhere to the provisions of Biomedical Waste Management Rules, 2016. The petitioner through their counsel gave a further undertaking before this Court that they would adhere to the aforementioned directions.

14.I also would mandate that safety audit should be conducted to measure the pollution levels caused by the petitioner. The impact on the health of the persons residing in the surrounding villagers shall be studied by the district administration. Only if the petitioner's activities pass muster, license will be renewed. As on date, the petitioner's license is very much holding good. It has not been cancelled or suspended. So long as the petitioner's license is in force, the petitioner cannot be prevented from transporting the wastes to their factory premises.

15.If there is any lapse on the part of the petitioner, then, the petitioner will have to be fastened with liability. In this case, there was a serious lapse on the part of the petitioner during the process of transporting. The petitioner is mandated to ensure that no untoward occurrence ever takes place in future. If any such occurrence takes place, it is open to any



aggrieved individual to file a petition for contempt of court. This Court would take a serious view of it.

16. One thought crosses my mind. It is true that the petitioner is entitled to carry on their business in the village in question. Unless the villagers have a stake, they would not be indifferent when they perceive threat to their health and wellbeing. They are justified in thinking that their village should not be converted into a cesspool or garbage bin for collecting and disposal of medical waste from the surrounding districts. It would have been far better if a decentralised approach had been adopted. This is a case in which the polluter pays principle can very well be applied. It is for the District Administration to ensure that the surrounding villagers are adequately compensated for every loss or injury which they might possibly have suffered or may suffer. I am not for a moment giving a finding adverse to the petitioner. If any loss or injury on account of the petitioner's activities is established, it is the duty of the administration to ensure that the petitioner appropriately compensates for the same. The petitioner through their counsel gives a specific undertaking that they would take up CSR initiatives in a very generous manner and ensure that the surrounding villages are fully benefitted. The petitioner is not



engaged in a charitable mission. It is business and the petitioner is obviously making a decent profit. It would be in the fitness of things if the petitioner shares their profit and proceeds with the surrounding villages.

17. Having said so, I direct the administration to ensure that the petitioner has free access through all the public roads leading to the petition mentioned factory premises. It is well settled that any person is entitled to use public road. It is not open to any private individual to block the free movement of any vehicle. The petitioner will be wise and mature enough not to treat this order as victory. The petitioner must remember that courts can pass orders but it is only the authorities who execute the same. In a democracy, the people are supreme and it is imperative that the villagers are taken into confidence. In respect of the accident that had occurred on 19.01.2023, though an FIR has been registered, the petitioner is directed to report the same as per the Rules.

18. The writ petition is partly allowed. No costs. Connected miscellaneous petitions are closed.

01.03.2023

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

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- 1.The District Collector, Virudhunagar District, Virudhunagar.
- 2.The Superintendent of Police, Virudhunagar Town and District.
- 3.The Regional Divisional Officer, Aruppukkottai, Virudhunagar District.
- 4.The Deputy Superintendent of Police, Tiruchuli Taluk,
Virudhunagar Town & District.
- 5.The Deputy Tahsildar, Kariapatti, Virudhunagar District.
- 6.The Inspector of Police, A.Mukkulam Police Station,
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G.R.SWAMINATHAN, J.

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