



W.P(MD)Nos.13652 and 29311 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P(MD)Nos.13652 and 29311 of 2023

AND

WMP(MD)No.11506 of 2023 in

WP(MD)No.13652 of 2023

and

WMP(MD)Nos.25327, 25328 of 2023 in

WP(MD)No.29311 of 2023

W.P(MD)No.13652 of 2023

KodangiPommanayakar

... Petitioner

vs.

1. The District Collector,
Karur District,
Karur.

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai,
Karur District.

3. The Tahsildar,
Taluk Office,
Kulithalai,
Karur District.

4. The Commissioner,
Kulithalai Municipality,
Kulithalai,
Karur District.

... Respondents



W.P(MD)Nos.13652 and 29311 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent, to take action under Rule 5(2) of The Municipal Solid Wastes (Management and Handling) Rules, 2000 against the 4th respondent for violating the aforesaid Rules and running Garbage and dumping yard and storing drainage water at the survey Nos.104/2B an extent of 2-35.20 Ares and 105/3A2 an extent of 1-22.00 Ares – Patta No.2137 situated at Komali Parai, Sathyamangalam Revenue Village, Kulithalai Taluk, Karur District.

For Petitioner : Mr.R.Murugappan
For R1 to R3 : Mr.P.Thilak Kumar, Government Pleader
For R4 : Mr.AN.Ramanathan, Standing Counsel

W.P(MD)No.29311 of 2023

Pommanayakar @ Kodangi Pommanayakkar

... Petitioner

vs.

1. The District Collector,
Karur District,
Karur.

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai,
Karur District.

3. The Tahsildar,
Taluk Office,
Kulithalai,
Karur District.



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4. The Commissioner,
Kulithalai Municipality,
Kulithalai,
Karur District.

5. The Chairman,
Head of the Department,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai-32.

6. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Karur,
Karur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 6th respondent's impugned consent order No.2304149951165 dated 24.03.2023 issued in favour of the 4th respondent and quash the same.

For Petitioner	: Mr.R.Murugappan
For R1 to R3	: Mr.P.Thilak Kumar, Government Pleader
For R4	: Mr.AN.Ramanathan, Standing Counsel
For R5 & R6	: Ms.M.Sudharani for Mrs.Vijayalakshmi Natarajan

COMMON ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

This common order will now dispose of the captioned two
'Writ Petitions' [hereinafter 'WPs' in plural and 'WP' in singular for the



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sake of brevity, convenience and clarity] and the captioned three 'Writ Miscellaneous Petitions' [hereinafter 'WMPs' in plural and 'WMP' in singular for the sake of brevity, convenience and clarity].

2. This common order has to be read in conjunction with and in continuation of earlier proceedings made yesterday [13.12.2023] in W.P(MD)No.29311 of 2023 and WMP(MD)Nos.25327 & 25328 of 2023 thereat which reads as follows:

W.P(MD)No.29311 of 2023
and
W.M.P(MD)Nos.25327 & 25328 of 2023

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

[Order of this Court was made by M.SUNDAR, J.,]

Captioned 'Writ Petition' [hereinafter 'WP' for the sake of brevity] has been filed in this Court on 01.12.2023 as a 'Public Interest Litigation' [hereinafter 'PIL' for the sake of convenience and clarity].

2.Factual matrix in a nutshell is that the subject matter of captioned PIL is 'FECAL SLUDGE TREATMENT PLANT' established by a local body ie., Kulithalai Municipality in S.F.No.104/2A and 105/3A1 in Sathiyamangalam Village, Kuzhithalai Taluk, Karur District' [hereinafter 'said plant' for the sake of brevity, convenience and clarity]; that grievance of PIL petitioner is that an order made under Section 25 of 'the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1794)' [hereinafter 'Water Act' for the sake of brevity, convenience and clarity] is impaired; that this 'order' under Section 25 of Water Act dated



24.03.2023 and bearing reference consent order No.2304149951165' shall hereinafter be referred to as 'impugned order' for the sake of brevity, convenience and clarity; that the impugned order being assailed *inter alia* on the ground that it violates Water Act is the crux and gravamen of captioned PIL.

3.Mr.R.Murugappan, learned counsel for PIL petitioner submits that an order under Section 25 of Water Act should necessarily be passed by the Tamil Nadu Pollution Control Board and this is in the light of Section 2(a) read with Section 4 of Water Act is learned counsel's say.

4.Issue notice.

5.Mr.P.Thilak Kumar, learned Government Pleader, accepts notice for respondents 1 to 3. Mr.AN.Ramanathan, learned Standing Counsel for Kulithalai Municipality accepts notice for fourth respondent. Ms.M.Sudharani, learned counsel representing Ms.Vijayakumari Natarajan, Standing Counsel for 'Tamil Nadu



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Pollution Control Board' [hereinafter 'TNPCB' for the sake of brevity] accepts notice for respondents 5 and 6.

6.Learned State Counsel ie., learned Government Pleader and learned Standing Counsel for local body [Kulithalai Municipality] point out the following:

(i) Said plant is a matter of public health and therefore it is imperative for the local populous / citizenry;

(ii) Impugned order has been made in accordance with Water Act;

(iii) Said plant has been set up at a huge cost of Rs.3.4 crores [public money has been spent as part of a welfare State activity] and said plant is functioning/operating for over one month now;

(iv) Steps for establishing said plant were commenced as early as in 2019; and

(v) PIL petitioner, can avail of the remedy of statutory appeal under Section 28 of Water Act by preferring an appeal to the Appellate Authority.



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7.Be that as it may, this Court is informed that another Writ Petition filed by the same PIL petitioner (on the same subject) being W.P(MD)No.13652 of 2023 is pending before a Hon'ble Single Judge.

8.Tag captioned WP with W.P(MD)No.13652 of 2023 and Writ Miscellaneous Petitions thereat and list both matters in the 'ADMISSION LIST' tomorrow. To be noted ideally tagging/listing orders have to be made on the administrative side but considering the nature of the matter/facts and circumstances of the case on hand, this directive to Registry is made as part of this judicial order as captioned WP is now before a Division Bench presided by one of us (M.SUNDAR.,J.) who has to make the tagging/listing order on the Administrative side.

9.List on **14.12.2023**.


[M.S.,J.] [R.S.V.,J.]
13.12.2023
(1/2)



W.P(MD)Nos.13652 and 29311 of 2023

3. The aforementioned proceedings captures all essentials that are imperative for appreciating this common final order and therefore we are not setting out the same again. Suffice to say that aforementioned 13.12.2023 proceedings shall now be read as integral part and parcel of this common final order. This also means that short forms, short references and abbreviations used in the earlier proceedings dated 13.12.2023 will continue to be used in the instant common final order also for the sake of brevity, convenience and clarity.

4. Before we proceed further, we deem it appropriate to write that pursuant to aforementioned earlier proceedings made yesterday, captioned two main WPs and WMPs thereat have been tagged and listed together as one item in the cause list today. The same set of counsel for the respective parties as captured in the previous proceedings made yesterday are before us today.

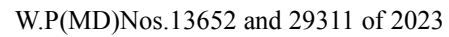
5. We shall refer to 'WP(MD)No.13652 of 2023' as 'I WP' and we shall refer to 'WP(MD)No.29311 of 2023' as 'II WP' for the sake of convenience and clarity.



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6. I WP has been filed with a Mandamus prayer seeking a direction to the District Collector to take action under Rule 5(2) of The Municipal Solid Wastes (Management and Handling) Rules, 2000, against 4th respondent for allegedly violating the rules by running said plant. This Court deems it appropriate to record that there are two more writ petitions on the same subject but the same have been disposed of. Aforementioned two writ petitions are W.P(MD)No.1195 of 2023 [filed by the same petitioner who has filed captioned PIL] and W.P(MD)No. 2792 of 2023 filed by one Thiru.Jeganathan. Prayer in both these writ petitions i.e., W.P(MD)Nos.1195 of 2023 and 2792 of 2023 are same as they pertain to a prayer for a Mandamus to the jurisdictional District Collector and jurisdictional Revenue Divisional Officer to take action under Section 133(b) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity]. W.P(MD)No.1195 of 2023 along with WMP(MD)No.1104 of 2023 thereat was disposed of by another Coordinate Hon'ble Division Bench in and by order dated 23.01.2023 which reads as follows:



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.1195 of 2023
and
W.M.P.(MD)No.1104 of 2023

KodangiPommanayaar

-VS-

... Petitioner

1. The District Collector,
Karur District, Karur.

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai, Karur District.

3. The Tahsildar,
Taluk Office, Kulithalai,
Karur District.

4. The Commissioner,
Kulithalai Municipality,
Kulithalai, Karur District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to take action under Section 133(b) of Cr.P.C., against the 4th respondent and his men for causing of public nuisance to the petitioner's Village.

For Petitioner : Mr.R.Murugappan

For R1 to R3 : Mr.P.Thilak Kumar,
Government Pleader

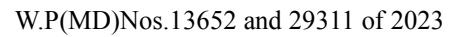
For R4 : Mr.A.Ramanathan, Standing Counsel

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition is filed seeking issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take action under Section 133(b) of Cr.P.C., against the 4th respondent and his men for causing public nuisance to the petitioner's Village.

2.Mr.P.Thilak Kumar, learned Government Pleader takes notice for the respondents 1 to 3 and Mr.A.Ramanathan, learned Standing Counsel takes notice for the 4th respondent.



3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The learned Government Pleader appearing for the respondents 1 to 3, on instructions, submitted that the Deputy Chief Scientific Officer, Tamil Nadu Pollution Control Board, vide letter dated 10.09.2019, has granted permission. Therefore, the prayer sought for by the petitioner has become infructuous.

5. In the light of the aforesaid submission, this Writ Petition stands dismissed. If the petitioner is aggrieved by the aforesaid letter, he is at liberty to approach the appropriate forum for appropriate relief. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
23.01.2023

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

7. W.P(MD)No.2792 of 2023 along with WMP(MD)No.2549 of 2023 thereat was disposed of by a Hon'ble Single Judge in and by order dated 16.02.2023 which reads as follows:



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.2792 of 2023
and W.M.P.(MD)No.2549 of 2023

Jaganathan

... Petitioner

Vs.

1.The District Collector,
Karur District, Karur.

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai, Karur District.

3.The Tahsildar,
Taluk Office,
Kulithalai, Karur District.

4.The Commissioner,
Kulithalai Municipality,
Kulithalai, Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to take action under Section 133(b) Cr.P.C., against the fourth respondent and his men for causing public nuisance to the petitioner and his family members and his village of Komali Parai, Sathyamangalam Revenue Village, Kulithalai Taluk, Karur District.



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For Petitioner : Mr.R.Murugappan
For R1 to R3 : Mr.J.K.Jeyaseelan,
Government Advocate(Crl.side)
For R4 : Mr.A.N.Ramanathan

ORDER

When the matter is taken up for hearing today, the learned counsel appearing for the petitioner seeks permission of this Court to withdraw this petition and he has also made an endorsement to that effect.

2.In view of the endorsement made by the learned counsel appearing for the petitioner, this Writ Petition is dismissed as withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

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

16.02.2023

8. This Court having captured the entire gamut of facts now turns to alternate remedy aspect which has been captured in clause (v) of paragraph 6 of proceedings made yesterday which is now being read as



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integral part and parcel of this common final order. This takes us to Section 28 of Water Act. Section 28 of Water Act is captioned as 'Appeals' and it talks about appeal by any person aggrieved by an order made by TNPCB under Sections 25, 26 or 27 [to be noted, in the case on hand, impugned order has been made under Section 25 of Water Act]. Be that as it may, as regards the appellate authority, sub-section (2) of Section 28 of Water Act says that the State Government shall appoint an appellate authority consisting of single person or three persons. In the case on hand, learned Government Pleader Mr.P.Thilak Kumar and learned Standing Counsel for TNPCB Ms.M.Sudharani representing the counsel on record Mrs.Vijayalakshmi Natarajan submit in one voice that the State Government has constituted a Hon'ble appellate authority under the Chairmanship of **Hon'ble Mr.Justice M.GOVINDARAJ(Retired)** with two technical members vide G.O(Ms)No.95, Environment, Climate Change and Forest [EC-1] Department, dated 23.05.2022 and the present address of appellate authority of TNPCB is as follows:

**'Hon'ble Mr.Justice M.GOVINDARAJ (Retired),
Chairman,
Chateau D ampa, 4th Floor
No.37, Nelson Manickam Road,
Aminjikarai,
Chennai-600 029.'**



9. We deem it appropriate to relegate the entire matter to
aforementioned appellate authority for PIL petitioner to file an appeal as,
(a) the matter turns heavily on facts; and
(b) technicalities are involved.

10. In the interest of completion of facts, we also deem it appropriate to capture the fact that as regards I WP, the prayer talks about Survey No.104/2B admeasuring an extent of 2.35.20 Ares and Survey No.105/3A2 admeasuring an extent of 1.22.00 Ares [Patta No.2137] situate at Komali Parai, Sathyamangalam Revenue Village, Kulithalai Taluk, Karur District. As regards II WP, survey numbers have been captured in paragraph 2 of aforementioned earlier proceedings dated 13.12.2023.

11. As regards the appeal, one of the points that is urged by learned counsel for PIL petitioner is that impugned order has been made by District Environmental Engineer, TNPCB, Karur but Section 25 of Water Act mandates that an order under Section 25 of Water Act should be made only by TNPCB and this aspect has been captured in paragraph 3 of earlier proceedings dated 13.12.2023.



12. We express no opinion on this aspect of the matter and we make it clear that if PIL petitioner chooses to file an appeal before aforementioned appellate authority under Section 28 of Water Act, the same shall be entertained by treating the impugned order as an order under Section 25 of Water Act. It will be open to PIL petitioner to raise aforementioned points and it will be open to TNPCB and the other respondents to meet the same and it is for the appellate authority to take a call on the same.

13. In the light of the narrative thus far, as we have relegated the matter to aforementioned appellate authority under Section 28 of Water Act, we make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, Hon'ble appellate authority shall consider the appeal [if filed] in accordance with Section 28 of Water Act on its own merits and in accordance with the procedure adumbrated in Section 28 of Water Act and the appeal shall be heard on its own merits and in accordance with law untrammelled by this order which has been made for limited purpose of relegating the matter to appellate authority and give a closure to captioned two WPs and captioned three WMPs.



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14. Captioned WPs and WMPs are disposed of with aforesaid observations and preservations of rights in the aforesaid manner. We make it clear that all the rights and contentions of PIL petitioner as well as respondents are preserved for being canvassed before Hon'ble appellate authority. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
14.12.2023

Index : Yes
Neutral Citation : Yes
bala

To

1. The District Collector,
Karur District,
Karur.

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai,
Karur District.

3. The Tahsildar,
Taluk Office,
Kulithalai,
Karur District.

4. The Commissioner,
Kulithalai Municipality,
Kulithalai,
Karur District.



W.P(MD)Nos.13652 and 29311 of 2023

5. The Chairman,
Head of the Department,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai-32.

6. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Karur,
Karur District.



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W.P(MD)Nos.13652 and 29311 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

bala

COMMON ORDER MADE IN
W.P(MD)Nos.13652 and 29311 of 2023
DATED : 14.12.2023