



Cont.AMD)No.4 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 05.06.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

Cont.A.(MD)No.4 of 2019
and Sub Application Nos.2317 & 2318 of 2019

1.M.K.Shanmugasundaram
The Development Commissioner
Madras Export Processing Zone,
Special Economic Zone & HEOUs in Tamil Nadu
Pondicherry & Andaman Nicobar Islands
Administrative Office Building,
National Highway – 45
Tambaram
Chennai

2.N.Rajalingam
The Assistant Development Commissioner
Madras Export Processing Zone,
Special Economic Zone & HEOUs in Tamil Nadu
Pondicherry & Andaman Nicobar Islands
Administrative Office Building,
National Highway – 45
Tambaram
Chennai 45

.. Appellants/Contemnors
/Respondents 1 & 2

Vs.



Cont.AMD)No.4 of 2019

M/s.Vetrivel Minerals (V.V.Minerals)
Sy. No.424 and 416
AMRL Hi Tech City Limited (SEZ)
Nanguneri, Tirunelveli
Rep. by its
Managing Partner

.. Respondents

Appeal filed under Section 19 of the Contempt of Courts Act, 1971
against the common order made in Cont.P.(MD) No.1180 of 2018 in
WMP(MD) No.7319 of 2017 in W.P.(MD) No.9589 of 2017 dated
26.02.2019.

For Appellants : Mr.R.Sankaranarayanan
Additional Solicitor General
of India assisted by
Mr.D.Saravanan
CGSSC

For Respondent : No appearance

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

This contempt appeal has been preferred against the order of
punishment inflicted against the appellant by the learned Single Judge in
Cont.P.(MD) No.1180 of 2018 dated 26.02.2019. In fact, against the
respondent herein, the appellant department had granted a Letter of
Approval (in short 'LoA') by proceedings dated 02.12.2011 for



Cont.AMD)No.4 of 2019

manufacturing process in a Special Economic Zone under the provisions of the Special Economic Zone Act, 2005 (In short SEZ Act). The said license/permission, according to the terms and conditions of the said proceedings dated 02.12.2011, will be valid for a period of five years from the date of commencement of production/service activities. While that being so, in view of the input received by the appellant department from various sources, they decided to suspend the approval dated 02.12.2011 and accordingly, a suspension order has been issued by the appellant department on 28.12.2016. The said order of suspension was under challenge in W.P(MD) No.9589/2017 filed by the respondent herein.

2. In the said writ petition, by order dated 25.05.2017, a learned Judge granted an interim order of stay of the said suspension order.

3. Subsequently, since the five years period of the permission originally granted by the department dated 02.12.2011 was about to be completed or already been over, it seems that a renewal application has been made by the respondent to the appellant department. In consideration of the said renewal application made by the respondent, the appellant department,



Cont.AMD)No.4 of 2019

taking note of the development that had been taken place, which culminated in the suspension order and other aspects, had issued a show cause notice on 09.10.2017 asking show cause from the respondent within 30 days as to why request for renewal of LoA cannot be rejected by the appellant department.

4. On receipt of the show cause notice, the respondent, instead of giving show cause to the appellant department, had filed a contempt petition alleging that when the order of suspension itself has been stayed by the Court, subsequently renewal application, if at all to be considered, it should be considered positively in favour of the respondent and in this regard, there was no room for the appellant department to even sought for show cause. Therefore, treating the said show cause as a violation, such contempt petition was filed.

5. The learned Judge, who heard the contempt petition, after hearing both sides, had passed an order in the said contempt petition on 26.02.2019 whereby the learned Judge had inflicted the punishment against the appellants sentencing them to undergo simple imprisonment for a period of



Cont.AMD)No.4 of 2019

two weeks and also imposed a fine of Rs.5,000/- to be paid within three weeks, failing which, they shall undergo further imprisonment for two more weeks and also the learned Judge stayed the show cause notice dated 09.10.2017.

6. Aggrieved over the said order passed by the learned Judge and also the said contempt petition, by which, the punishment of imprisonment, since has been inflicted against the appellant officers, this contempt appeal has been filed.

7. Assailing the said order of punishment awarded by the learned Judge, which is impugned herein, the learned Additional Solicitor General for the appellants would canvass the point to state that the very permission order was granted by the department on 02.12.2011 for a period of five years from the date of commencement of production/service activities, which, according to the respondent, had been commenced from the very passing of such order of permission and subsequently even though a specific date has been mentioned as 31.03.2012, as the commencing date, in both way, the original permission granted by the department was expired



Cont.AMD)No.4 of 2019

and therefore, assuming that the order of suspension had been issued by the department, if it is erroneously or otherwise, they would not create a new way to agitate the issue by giving a cause of action to challenge that suspension order. However, since the writ Court had granted interim order of suspension order, taking further advantage of the said order passed by the Writ Court, the respondent, though had already applied for renewal, which had been considered and show cause notice was issued, instead of opposing the same by giving show cause, had moved this Court ie., before the learned Judge, filing the contempt petition stating that the issuance of very show cause notice by the appellant department must be construed as a violation of the interim order passed by the Writ Court granting stay of the order of suspension.

8. Though this point has been canvassed before the learned Judge that has not been considered in proper perspective and the learned Judge has come to the conclusion that there has been violation of the order, ie., the interim order of stay granted by the Writ Court, by then, the punishment which is impugned herein, was inflicted against the appellant officers for no fault on them. Therefore, the learned Additional Solicitor General of India



Cont.AMD)No.4 of 2019

seeks indulgence of this Court.

WEB COPY

9. In fact, this contempt appeal had come up for hearing before us on 02.06.2023, on that date even though the appellant side was ready for arguments, there was no representation for the respondent and the earlier counsel, who represented, namely, Mr.Kingsly Solomon, joined through Video Conferencing and stated that already change of vakalat had been given by him at the request of the respondent and today also though he appeared and reported the same, there is no other counsel appearing and it seems that no alternative arrangement had been made by the respondent.

10. Since the Court already waited for the appearance of the respondent atleast twice before us, since there had been no representation, we decided to take up the matter on merits. That is how, we heard the matter at length with the arguments of the learned Additional Solicitor General for the appellants. Further since it is an appeal arising out of the punishment under the contempt jurisdiction of this Court, naturally, it is an issue between the appellants, who suffered with the punishment, and the Court. Therefore, we have heard the matter at length as stated above and



decided to dispose of the same on merits.

WEB COPY

11. As has been rightly pointed out by the learned Additional Solicitor General of India appearing for the appellants, first of all, the letter of approval issued by the appellant department dated 02.12.2011 is only for five years period from the date of commencement and as per the averment made by the respondent before this Court, such a commencement, since has been made, since the date of LoA, it should only be construed that five years period is over by 02.12.2016.

12. Only thereafter, the suspension order was passed by the appellant department on 28.12.2016. Therefore, *prima facie* we are of the view that the said suspension order dated 28.12.2016 was not at all necessitated as the five years approval period was over by then.

13. Assuming that since there has been a fictitious date some time in March 2012 as the commencing date, even that date if it is reckoned to be the five years period is over, when the writ petition filed by the respondent challenging the order of suspension, was taken up for hearing, only on



Cont.AMD)No.4 of 2019

25.05.2017, the learned Judge stayed the suspension order as on that date, the five years period was over. Therefore, the very suspension order itself either become otiose or become infructuous.

14. Therefore, after the five years period was over, since the respondent sought for renewal for further period, it is for the appellant department to consider such a renewal application on its own merits and to take a decision.

15. In this process, the appellant department, having taken note of the past history, which, in fact, triggered them to culminate in the suspension order, had decided to issue a show cause notice on 09.10.2017, which was considered as an alleged violation of the interim order of stay granted on 25.05.2017 and that is how, the said contempt petition was filed in Cont.P. (MD) No.1180/2018, wherein, the impugned order has been passed inflicting the punishment of two weeks simple imprisonment on the appellant officers and also imposed a fine of Rs.5,000/-.

16. The said punishment awarded by the learned Judge through the



Cont.AMD)No.4 of 2019

impugned order is absolutely unnecessary and in fact, there has been no ground to entertain even the contempt petition since no violation of the order dated 25.05.2017 could be noticed because the show cause notice dated 09.10.2017 is an independent action to consider the renewal application made by the respondent and that does not have any connection with the interim order dated 25.05.2017.

17. Moreover, on the date of interim order passed by the writ Court dated 25.05.2017, since the five years permission period had already been lapsed, as we have already stated, the question of granting interim stay does not arise. However, we do not want to go into that aspect, since it is only a contempt appeal.

18. Moreover, the order of suspension granted by one authority and consideration of the renewal application is vested with another authority that has been pointed out by the learned Judge in the order impugned at Paragraph No.22 that still add some ground only to the appellant and not in favour of the respondent. Therefore, for that reason also, we do not find any merit in the order of punishment awarded by the learned Judge through the



Cont.AMD)No.4 of 2019

of receipt of a copy of this order.

WEB COPY

21. With these directions, the contempt appeal is ordered accordingly.

No costs. consequently connected Miscellaneous Petitions are closed.

(R.S.K.,J.) (K.K.R.K.,J.)
05.06.2023

Index : Yes/No

Internet : Yes

RR



WEB COPY



Cont.AMD)No.4 of 2019

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

RR

Cont.A(MD)No.4 of 2019

05.06.2023