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W.P.No.1394 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.1394 of 2024

M/s PSD Aqua
rep.by its Proprietor Mr.G.Parasuraman
Office at S.No.147/1D1, Mel Street
Pallalakuppam Village & Post
Pernambut Taluk
Vellore District 635 805 .. Petitioner

v.

1. The Chief Engineer
SG & SWRDC
Water Resource Department
Tharamani
Chennai 600 113

2. The Chairman
Tamil Nadu Pollution Control Board
76, Mount Salai, Guindy
Chennai 600 032 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, to call for the



W.P.No.1394 of 2024

records of the first respondent in Lr.No.OT9/DD(G)/AG-VI/Fresh NOC Rejection/2023 dated 15.12.2023 and quash the same and direct the first respondent to issue No Objection Certificate for transportation of water from S.F.No.181/2C, Kothapalli Village, Pernampattu Firka, Vellore District to the present site of the petitioner viz., PSD Aqua, S.F.No.147/1D, Mel Street, Pallalakuppam Village and Post, Pernampattu Taluk, Vellore District and consequently direct the second respondent to permit the petitioner to operate the unit at S.F.No.147/1D, Mel Street, Pallalakuppam Village and Post, Pernampattu Taluk, Vellore District only for the purpose of processing the water obtained from S.F.No.181/2C, Kothapalli Village, Pernampattu Firka, Vellore District for which NOC dated 31.07.2023 has already been granted in accordance with law.

For Petitioner :: Mr.K.S.Viswanathan
Senior Counsel for M/s T.Hemalatha

For Respondents :: Mr.G.Nanmaran
Special Government Pleader for R1
Mr.V.Gunasekar for R2

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the proceedings of the first respondent dated 15.12.2023 and to



W.P.No.1394 of 2024

direct the first respondent to issue No Objection Certificate for transportation of water from S.F.No.181/2C, Kothapalli Village, Pernampattu Firka, Vellore District to the present site of the petitioner viz., PSD Aqua, S.F.No.147/1D, Mel Street, Pallalakuppam Village and Post, Pernampattu Taluk, Vellore District and consequently direct the second respondent to permit the petitioner to operate the unit at S.F.No.147/1D, Mel Street, Pallalakuppam Village and Post, Pernampattu Taluk, Vellore District only for the purpose of processing the water obtained from S.F.No.181/2C, Kothapalli Village, Pernampattu Firka, Vellore District, for which NOC dated 31.07.2023 has already been granted in accordance with law.

2. Brief facts that are necessary for the disposal of this writ petition are as follows:-

(a) The petitioner has established the business in manufacturing and processing of packaged drinking water in the year 2013. The petitioner obtained the required licence as per Bureau of Indian Standards Certification Marks in the year 2014. The petitioner also obtained No



W.P.No.1394 of 2024

Objection Certificate (in short, “NOC”) from the Panchayat to set up bore wells for extraction of ground water on 06.08.2013. It is the specific case of petitioner that at the time when the petitioner dug the bore well and established his water plant in S.F.No.147/1D in Pallalakuppam Village, there was no area categorization for extraction of ground water. However, the second respondent-Board passed an order of closure against the petitioner's unit at Pallalakuppam Village, on the ground that the unit was operating without consent and without obtaining NOC from the first respondent for drawal of ground water, by order dated 28.10.2022.

(b) The petitioner filed an appeal as against the order of closure before National Green Tribunal (Southern Zone) and the appeal was also dismissed on 20.12.2022 by referring to G.O.(Ms)No.142, Public Works (R2) Department dated 23.07.2014, wherein NOC is required from the first respondent for drawal of groundwater. The petitioner has challenged the order of National Green Tribunal in W.P.No.10058 of 2023. The petitioner admits that Pallalakuppam Village in which the petitioner has started his water plant is categorised as over exploited/critical area where drawal of water for commercial purpose is prohibited.



W.P.No.1394 of 2024

(c) In view of the order of closure passed by the second respondent

and the fact that the petitioner cannot draw water for his plant, it is stated that the petitioner closed the bore well in S.F.No.147/1D, Mel Street, Pallalakuppam Village. Thereafter, the petitioner purchased a different property in S.F.No.181/2C, Kothapalli Village, Pernampattu Firka, Vellore District, which is classified as a safe zone and dug the bore well for drawal of water. When the petitioner submitted an application to the first respondent in the name of its sister concern for drawal of water in S.F.No.181/2C in Kothapalli Village, NOC was granted by the first respondent on 31.07.2023. When the previous petition in W.P.No.10058 of 2023 came up for hearing, this Court on 10.08.2023, after recording the fact that NOC was granted by the first respondent to draw water from another source, disposed of the writ petition with a direction to the respondents to consider the representation that might be submitted by the petitioner for running his unit within a period of four weeks from the date of receipt of copy of order. When the petitioner submitted a representation on 10.08.2023 to permit the petitioner to transport groundwater from Kothapalli village to the existing unit, the same was returned by the impugned order, on the



W.P.No.1394 of 2024

ground that the application submitted by the petitioner could not be considered in view of G.O.(Ms)No.142, Public Works Department dated 23.07.2014, wherein the drawal and transportation of groundwater for water based industries is not permitted in critical and over-exploited Firka. The NOC was thus denied to the petitioner even in respect of an area where there is no restriction or prohibition for drawal of water. This order is the subject matter of challenge in this writ petition.

3. Even though G.O.(Ms)No.142 dated 23.07.2014 prohibits the drawal of water in an over exploited area, the same does not prohibit the drawal of water in permissible area (safe zone or semi critical area) and transport the same to the area which is classified as over exploited area. The prohibition is only for drawal of water for any commercial purpose in an over exploited area. Such prohibition does not apply to transportation of water from other area where drawal of water is not prohibited. There cannot be a restriction for consumption of water even in areas which are classified as over exploited. From the entire counter affidavit, this Court is unable to get any valid ground to deny the petitioner's request for transportation of



W.P.No.1394 of 2024

groundwater from an area where drawal of groundwater is not prohibited for consumption or for its usage in an area which is classified as over exploited area. As rightly pointed out by the learned Senior Counsel for the petitioner, the first respondent has misconstrued the application as if the application is for drawal of water in S.F.No.147/1D, Mel Street, Pallalakuppam Village, which is classified as over exploited area (non-permissible area). When the application is only for transportation of water from an area where drawal of water is permissible to an area which is over exploited, the same cannot be declined merely relying upon G.O.(Ms)No.142 dated 23.07.2014, as the said Government Order does not prohibit the drawal and transportation of groundwater even for industries from an area where drawal of water is permitted. In that view of the matter, this Court finds that the impugned order is unsustainable and the same is liable to be set aside.

4. Moreover, while considering a similar issue, a Division Bench of this Court in W.P.No.16299 of 2018, by interim order dated 11.11.2020, has clarified the position that unless there is a specific complaint against a



W.P.No.1394 of 2024

particular unit for illegal extraction of water or illegal transportation of water from the unit situated in critical area without proper NOC as contemplated under G.O.(Ms)No.142 dated 23.07.2014, the water based industries like the petitioner can be permitted to carry on their operations subject to the undertaking given by the units that they would not draw water from the areas which are classified as critical or over exploited Firka.

5. It is now admitted before this Court that the petitioner is not operating his unit by virtue of the impugned order. In that view of the matter, the impugned order is quashed. It is open to the petitioner to apply for renewal of NOC before the first respondent for drawal of water from S.F.No.181/2C, Kothapalli Village and for transportation of the same to his industrial unit in S.F.No.147/1D, Mel Street, Pallalakuppam Village and the application, if any, submitted by the petitioner will be processed by the first respondent taking note of this order on the interpretation of G.O.(Ms)No.142 dated 23.07.2014, on merits and appropriate orders shall be passed as per law. It is clarified that drawal of water and transportation of water from an area which is categorised as safe zone to a plant situated in an



W.P.No.1394 of 2024

area which is categorised as over exploited for the purpose of packaging will be on an undertaking by the industry that there will be no drawal of water from the area classified as over exploited. With this observation, the writ petition stands allowed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
18.04.2024

ss

To

1. The Chief Engineer
SG & SWRDC
Water Resource Department
Tharamani
Chennai 600 113
2. The Chairman
Tamil Nadu Pollution Control Board
76, Mount Salai, Guindy
Chennai 600 032



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