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W.P.No.7924 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM :

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

W.P.No.7924 of 2020

The Tamil Nadu Stone Quarry Lease
Holders Welfare Association
(Regd.No.54/99) rep.by Secretary
S.Udhayasoorian
No.20, Alagesan Street
Tambaram West
Chennai 600 045

..

Petitioner

v.

Tamil Nadu Pollution Control Board
rep.by its Member Secretary
76, Mount Salai, Guindy
Chennai 600 032

..

Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the respondent relating to the proceedings passed in B.P.No.21 dated 31.07.2019 in so far as it relates to the condition / clause No.5 i.e., “stone crushing units and M.sand units shall not store raw materials and products more than one month capacity”, quash the same as illegal and arbitrary.

For Petitioner :: Mr.A.V.Arun for Mr.R.Vinoth Kumar



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For Respondent :: Mr.V.Gunasekar
Standing Counsel

ORDER

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

This writ petition is filed praying to quash the proceedings issued by the respondent in B.P.No.21 dated 31.07.2019 insofar as it relates to the condition / clause No.5 i.e., “stone crushing units and M.sand units shall not store raw materials and products more than one month capacity”, as illegal and arbitrary.

2. The petitioner is a registered Association, which is formed by the members engaged in the business of quarrying stones, operating crusher units and manufacturing M.Sand in the State. The petitioner is aggrieved by the Board's Proceedings vide B.P.No.21 dated 31.07.2019 insofar as it relates to condition No.5, by which the members of the petitioner are prohibited to store the raw materials and products exceeding one month's capacity. In other words, the impugned condition reads as follows:-

“5. The stone crushing units & M-Sand units shall not store



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raw materials & products more than one month capacity and all the open storage should be properly covered with Tarpaulin to avoid dust emanation due to wind action.”

3. The petitioner has challenged the impugned condition mainly on the ground that the said restriction regarding quantity has no nexus to prevent pollution or the impact to the environment. The condition, according to the petitioner, is arbitrary and unsustainable. It was pointed out by the counsel that condition No.5 is without any deliberation or based on expert opinion, as the issue before the Board in the meeting held on 22.07.2019 was for a different purpose.

4. The learned counsel appearing for the petitioner submitted that the imposition of condition No.5 is beyond the power and jurisdiction of the respondent and the scope and ambit of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974.

5. A counter affidavit is filed by the respondent, wherein the



objections raised by the respondent Board are summarized in paragraph-11.

Paragraph 11 of the counter reads as follows:-

“11. It is further submitted that the petitioner's prayer of staying the condition/clause no.5 i.e., The stone crushing units & M-Sand units shall not store raw materials & products more than one month capacity and all the open storage should be covered with Tarpaulin to avoid dust emanation due to wind action may not be considered since the above measure has been suggested by the technical committee and it is also essential in view of the following reasons:-

1. Effective control of spreading dust emission from the stock piles due to wind action.
2. Covering huge heap of raw materials / products (if allowed to stock the material without any restrictions) with tarpaulin is a difficult task.
3. Space for free vehicle movement will get reduced due to over stock of the materials.
4. The area allocated for green belt development will get reduced, if it is allowed to stock the material without any restrictions.
5. Water sprinklers coverage area will be to a certain extent only. If they are allowed to stock huge quantity of materials, the effectiveness of water sprinklers will get reduced.
6. Stocking maximum of one month quantity of raw material / product will be optimum to control the air pollution.



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7. Instead of stocking the raw material / products in the crusher premises, they can control the receiving of raw materials (boulders) from the stone quarry. Or else, they can stock the finished products (jelly) in the construction site (i.e.) in the ready mix concrete plant / batching plant.”

6. One of the contentions raised by the learned counsel for respondent is that a writ petition was filed earlier before this Court in W.P.No.26786 of 2019, in public interest, with a prayer that condition No.1 of Board's Proceedings in B.P.No.21 dated 31.07.2019 dispensing with the condition imposed earlier in B.P.No.4 dated 2.7.2004, is illegal. The writ petition was dismissed, however, giving liberty to the petitioner to approach the National Green Tribunal. Therefore, the counsel for respondent would submit that the petitioner can raise this issue only before the National Green Tribunal and not before this Court.

7. However, the petitioner has produced before this Court the order passed by the National Green Tribunal, Southern Zone, Chennai dated 19.02.2020. When the petitioner filed Original Application in O.A.No.35 of 2020 before the National Green Tribunal, Southern Zone with an identical



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prayer, the National Green Tribunal held that the application before the Tribunal is not maintainable under Sections 14, 15, 16 & 18 of the National Green Tribunal Act, 2010. However, liberty was given to the petitioner to approach any other appropriate forum for getting appropriate relief. In such circumstances, the contention of the learned counsel for respondent cannot be countenanced.

8. Even on merits, this Court is able to see that the reasons for incorporating clause No.5 in the impugned proceeding is without an application of mind and the decision to incorporate clause No.5 is arbitrary and it is an unreasonable restriction. The impugned condition restricting the storage of raw material is violative of Article 14, in the sense that there is total non-application of mind. The stocking of raw materials/ products in the crusher premises is not prohibited by any statute. Subject to availability of area and other factors, any individual member of the petitioner Association may stock the raw materials in the crusher premises depending upon the availability of space. The members of the petitioner Association cannot be compelled to restrict the storage of raw materials, which is a



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privilege and right of the operator, merely because the respondent has apprehension. Having regard to the norms prescribed by the Pollution Control Board to maintain ambient air quality standard at all times within the crusher premises and there is a clause which mandates the covering of raw materials with Tarpaulin, there cannot be a restriction with the quantity of raw materials to be stored in every crusher unit. Every individual crusher unit depends upon variety of circumstances and may store raw materials foreseeing market conditions. Therefore, this Court is unable to find any nexus between the restriction and the object that is sought to be achieved by imposing the said restriction. From the reasons stated in the counter affidavit, it can be inferred that the intention behind the respondent incorporating condition No.5 in the Board's Proceedings appears to be bonafide, the same is likely to interfere with the business prospects of operators. Therefore, this Court finds that the impugned condition is in violation of Article 14. As a result, this writ petition stands allowed and the impugned condition/clause No.5 insofar as it restricts storage of raw material in B.P.No.21 dated 31.07.2019 is quashed. It is made clear that the condition that the open storage should be covered with Tarpaulin to avoid



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dust emanation shall be in tact. Consequently, W.M.P.No.9363 of 2020 is

closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
12.06.2024

SS

To

1. The Member Secretary
Tamil Nadu Pollution Control Board
76, Mount Salai, Guindy
Chennai 600 032



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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

SS

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