



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.01.2025

Pronounced on : 28.01.2025

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.23257 of 2024

M/s.Arul Murugan Agencies,
Rep. by its Proprietor,
K.M.Chidhambarasamy
S.F.No.683/1, Vavipalayam Village,
Palladam Taluk,
Tiruppur District.

.. Petitioner

Vs.

- 1.The District Collector,
Tiruppur District,
District Collectorate,
Tiruppur.
- 2.The Director,
Centre for Environmental Studies (CES),
Anna University,
Guindy, Chennai – 600 025.
- 3.The District Environment Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur South,
Tiruppur.



4. The Joint Director of Industrial Safety and Health – II,
Government of Tamil Nadu,
No.9/11, 2nd Floor, Stanes Road, I Floor,
Tiruppur – 641 602.

5. The Assistant Director of Town Planning,
District Town Planning Office,
Kumaran Commercial Complex, I Floor,
Tiruppur – 641 601.

6. The Block Development Officer,
Pongalur Panchayat Union Office,
Pongalur, Tiruppur District.

7. The President / Executive Officer,
V.Vavipalayam Village Panchayat,
Pongalur Panchayat Union,
Tiruppur – 641 671.

8. The Director of Town and Country Planning,
Town and Country Planning Office,
CMDA Office, Complex, E and C Market Road,
Srinivasa Nagar, Virugambakkam,
Koyambedu, Chennai – 600 107.

... Respondents

R8 impleaded as per order dated
03.12.2024 in W.M.P.No.39148/2024
in W.P.No.23257 of 2024.

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records culminated in the impugned letter 04.07.2024 issued by the 7th respondent and quash the same as illegal, and consequently, direct the 7th respondent not to interfere in the functioning of the petitioner's pilot plant.



WEB COPY



For Petitioner .. Mr.M.Himavanth
For Mr.K.Kannan

For R1, R4 and R5.. Mr.N.Naveen Kumar, Govt. Advocate

For R3 .. Mr.S.Shanmuganath Sekar

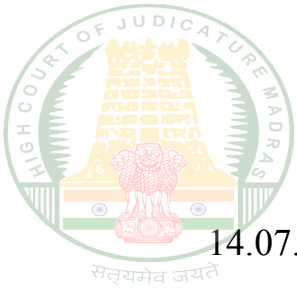
For R7 .. Mr.P.Nethaji

For R2 & R8 .. No appearance.

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to a letter dated 04.07.2024 issued by the 7th respondent, the President / Executive Officer, V.Vavipalayam Village Panchayat, Pongalur Panchayat Union in Tiruppur District and to quash the same and direct the 7th respondent not to interfere in the functioning of the petitioner's pilot plant.

2.In the affidavit filed in support of the writ petition, it had been contended that the petitioner, Proprietor of M/s.Arul Murugan Agencies had commenced business as a charcoal production unit in the year 2012. The V.Vavipalayam Panchayat had granted approval by proceedings dated



14.07.2012 for construction of industrial building and factory to an extent of

234 Sq.mtrs. The petitioner was also registered with the Department of Industries and Commerce on 09.02.2012. The charcoal unit was run below the ground level pit. This gave rise to environment issues. The matters were taken into consideration by the National Green Tribunal, Chennai. A judgment was delivered on 20.11.2020 in a batch of matters, wherein, a standard operating procedure was issued to be followed by the existing and proposed charcoal manufacturing units. The District Environment Engineers were instructed to ensure that charcoal manufacturing units functioned adopting the design and guidelines prepared for charcoal units by the Anna University. It was stated that all existing units like the petitioner must install a pilot plant to produce coconut shell charcoal from coconut shell as raw material. Several conditions had been imposed. The unit must be constructed in accordance with the report prepared by the Anna University.

3.The petitioner then applied for approval for construction of coconut shell charcoal factory at S.No.683/1 at Kullampalayam in Tiruppur District. The Assistant Director, Tiruppur District Town and Country Planning Office granted approval for construction of industrial building to an area of 699



sq.mts. This was also built by the petitioner. This was inspected by the 2nd respondent, Director, Centre for Environmental Studies, Anna University, Chennai and no objection certificate was also issued. It was stated that employment would be given to about 50 persons and farmers around 20 kilometers would be benefited. The District Environment Engineer, Tamil Nadu Pollution Control Board, had granted consent by proceedings dated 19.01.2023. This was granted under Section 25 of the Water (Prevention and Control) of Pollution Act, 1974. Thereafter, the District Environment Engineer, Tamil Nadu Pollution Control Board by proceedings dated 19.01.2023 had also granted consent to establish industry under Section 21 of the Air (Prevention and Control) of Pollution Act, 1981. The District Officer, Fire and Rescue Department, Tiruppur District, by letter dated 07.03.2024 had granted No Objection Certificate. The Agricultural Deputy Director, Tiruppur, by letter dated 20.03.2024 forwarded a consent letter that the lands can be used for non-agricultural purposes. The Joint Director of Industrial Safety and Health-II, Tiruppur, by letter dated 10.06.2024 had granted approval for the plan of the factory.

4. When all the authorities had granted approval, the 7th respondent,



WEB COPY

Village Panchayat President / Executive Officer, had issued the letter impugned in the writ petition dated 04.07.2024 that the industry is situated near a school and would cause pollution to the agricultural lands and therefore, permission could not be granted. It was stated that the petitioner had not approached the Panchayat Office after the building had been constructed. Questioning this letter of the 7th respondent, this Writ Petition has been filed.

5. Pending the Writ Petition, the Director of Town and Country Planning, Chennai was impleaded as the 8th respondent in the Writ Petition.

6. A counter affidavit had been filed by the 7th respondent, wherein, it had been stated that under Rule 5(3) of the Tamil Nadu Combined Development and Building Rules 2019, the Head of the Village Panchayat was empowered to grant approval of the site and grant permission to execute any work. It had also been stated that the environment clearance from the Tamil Nadu Pollution Control Board had been obtained by suppression of material facts. It was also stated that the factory if permitted to be operated would cause serious health problem. It was also stated that the

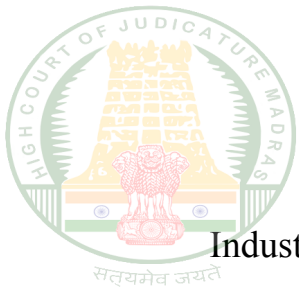


Assistant Director of Town and Country Planning Authority at Tiruppur had

only granted technical consent and not building permission. It was also stated that the village public objected to the unit of the petitioner. It was further stated that petitioner did not approach the 7th respondent seeking grant of permission. It was also stated that the technical clearances had been obtained by not disclosing necessary facts. It was also stated that the building permission granted can be nullified by the panchayat. It was also stated that the petitioner had misrepresented by producing false documents. It was also stated that the Writ Petition is devoid of merits and should be dismissed.

7.A counter affidavit had also been filed by the 5th respondent, wherein, it had been stated that the 5th respondent, Assistant Director of Town Planning, District Town Planning Office, Tiruppur, had granted necessary permission to the petitioner who had also paid the requisite charges.

8.A counter had also been filed by the 4th respondent, Joint Director of



Industrial Safety and Health – II, wherein, it had been contended that licence had been granted to the petitioner on 24.06.2024 after ensuring safety and health of workers and all other factors. It was stated that the license was issued in accordance with the Factory Act.

9. With respect to the counter affidavit filed by the 7th respondent who is the only respondent objecting to the permission sought by the petitioner to commence the charcoal factory, it must be mentioned that none of the reasons stated in the counter affidavit had actually been stated in the impugned letter.

10. A reference can be immediately made to the judgment of the Constitution Bench reported in ***(1978) 1 SCC 405, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and others,*** in which it had been held as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit



WEB COPY



*or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of **Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16]** :*

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.

11.A perusal of the records reveal that the petitioner was already running an industrial unit. Consequent to the directions of the National Green Tribunal, the petitioner was under an obligation to put up a fresh construction in compliance with the directions issued. The directions issued were as follows:

a).The pilot plant shall be constructed and adopted as per the Anna University vetted reported on design and guidelines prepared for Charcoal units by the TNPCB joint committee.

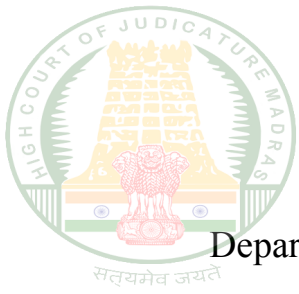


WEB COPY

(b) the charcoal production plant shall have an elevated charcoal pit with its bottom 1000 mm above the ground level and the water quenching tank with its bottom 500 mm above ground level.

(c) the modifications undertaken in the plant shall be inspected and certified as authorized process by safety consultant for the same and efficient working and the unit shall apply and obtain valid consent from the Board before commencement of operation of the plant.

12. The petitioner had obtained approval from the Assistant Director of Town Planning, District Town Planning Office, Tiruppur, for construction of building for an area of 699.31 sq.mts. This pilot plan was inspected by the 2nd respondent, the District Environment Engineer, Tamil Nadu Pollution Control Board and by proceedings dated 19.01.2023 was granted consent under under Section 25 of the Water (Prevention and Control) of Pollution Act, 1974. Thereafter, the District Environment Engineer, Tamil Nadu Pollution Control Board by proceedings dated 19.01.2023 had also granted consent to establish industry under Section 21 of the Air (Prevention and Control) of Pollution Act, 1981. The District Officer, Fire and Rescue



Department by letter dated 07.03.2024 had also granted No Objection Certificate. The Agricultural Deputy Director, Tiruppur, by letter dated 20.03.2024 had granted consent for utilization of the agricultural lands for non-agricultural purposes. The Joint Director of Industrial Safety and Health – II, Tiruppur, by letter dated 10.06.2024 had granted approval for grant of the factory. When all the authorities had granted permission, the 7th respondent alone had withheld the permission.

13. In the impugned letter, the only reason stated was that there were objections from the general public and that the factory is near a school and that agricultural lands will be affected and that the petitioner had not approached the 7th respondent seeking permission. With respect to the issue of agricultural lands being affected, it must be pointed that to ensure that the lands are not affected, the National Green Tribunal had passed directions and conditions as to how the factory should be constructed and the petitioner had put up the factory in accordance with such conditions. Therefore, that particular reason stated by the 7th respondents has to be rejected. With respect to the allegations that there were objections from the general public, it must be pointed out that the petitioner is not constructing a new factory



but was already running a charcoal factory and was now constructing an industrial unit in conformity with the regulations and stipulations put in place by the National Green Tribunal. Therefore, that particular reason advanced by the 7th respondent is also rejected as no material had been produced to substantiate the same. With respect to the allegations that the factory is near a school, it must be pointed out that the factory was in existence even earlier and that it is not the case of the 7th respondent that the school had come up after the factory had built up or that the factory is built near the school. They both were in existence earlier. The present industrial unit is put up by the petitioner only in accordance with the directions of the National Green Tribunal and it is not a fresh industrial venture started by the petitioner. The 7th respondent has stated that the petitioner had not approached the 7th respondent seeking permission. It is not clear what the 7th respondent meant by the word “approach”.

14. In the counter, various reasons had been stated, but they were not reflected in the impugned notice. As pointed out by the Hon'ble Supreme Court, there cannot be an improvement in a counter affidavit of the reasons stated in the notice impugned in the Writ Petition. It is clear that the 7th



respondent had not granted permission only because the petitioner had not approached the 7th respondent in an appropriate manner. I would leave it to the wisdom of the parties to understand what the appropriate manner meant.

15.I hold that the impugned order had been issued more to derail the efforts taken by the petitioner to put up an industrial unit, which would provide direct employment to 50 persons and indirect employment to the agriculturists who grow coconut trees in their lands.

16.The impugned letter is set aside.

17.A direction is given to the 7th respondent to issue appropriate permission to the petitioner to commence the factory within a period of two weeks from the date of receipt of a copy of this order.

18.With the above reasonings, this Writ Petition stands allowed. No costs.

28.01.2025

Index: Yes/No



Internet: Yes/No

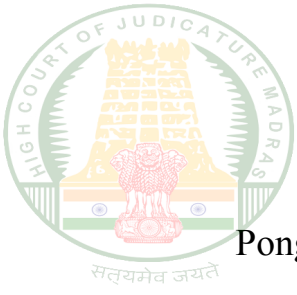
Speaking order / Non-speaking order

Neutral citation : Yes / No

smv

To

- 1.The District Collector,
Tiruppur District,
District Collectorate,
Tiruppur.
- 2.The Director,
Centre for Environmental Studies (CES),
Anna University,
Guindy, Chennai – 600 025.
- 3.The District Environment Engineer,
Tamil Nadu Pollution Control Board,
Tiruppur South,
Tiruppur.
- 4.The Joint Director of Industrial Safety and Health – II,
Government of Tamil Nadu,
No.9/11, 2nd Floor, Stanes Road, I Floor,
Tiruppur – 641 602.
- 5.The Assistant Director of Town Planning,
District Town Planning Office,
Kumaran Commercial Complex, I Floor,
Tiruppur – 641 601.
- 6.The Block Development Officer,
Pongalur Panchayat Union Office,



Pongalur, Tiruppur District.

WEB COPY

7. The President / Executive Officer,
V.Vavipalayam Village Panchayat,
Pongalur Panchayat Union,
Tiruppur – 641 671.
8. The Director of Town and Country Planning,
Town and Country Planning Office,
CMDA Office, Complex, E and C Market Road,
Srinivasa Nagar, Virugambakkam,
Koyambedu, Chennai – 600 107.

C.V.KARTHIKEYAN,J.

smv



WEB COPY



16

Pre-delivery order made in
W.P.No.23257 of 2024

28.01.2025