BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2025

CORAM:

THE HONOURABLE **MR.K.R.SHRIRAM, CHIEF JUSTICE**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD) No.3789 of 2013
and
M.P.(MD)No.1 of 2013

Super Sales India Ltd.,
Rep. By its Company Secretary,
34.A, Kamaraj Road, Coimbatore-641 018. ... Petitioner

-Vs-

1.The President,
Thappukundu Panchayat,
Theni Panchayat Union,
Theni District-625 534.

2.Member (Generation)
by the Chief Engineer,
Non-Conventional Energy Sources,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

3.The State of Tamil Nadu,
Rep. By its Secretary,
Rural Development and Local Administration
Department, Fort St.George,
Chennai-600 009. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the memorandum of the 1st respondent dated 18.02.2013 and quash the same and issue suitable direction, directing the respondents 1 and 2 not to take or initiate coervice steps as threatened in the said memorandum of the 1st respondent dated 18.02.2013 against the petitioner company.

For Petitioner	: Mr.Anirudh Krishnan, for M/s.Sarvabhauman Associates
For R1	: No Appearance
For R2 & R3	: Mr.P.Thilak Kumar, Government Pleader

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The petitioner is engaged in the business of manufacture of yarn of various counts and gears for various industries and in the generation of energy from renewal and non-conventional sources such as wind energy. Petitioner decided to, in view of power shortage in State of Tamil Nadu at the relevant point of time, set up wind mills. The State Government also had supported permitting various measures for generation of power through non-conventional sources like wind mills. Petitioner had erected 69 wind mills in various villages in Tamil Nadu. One such mill is within the jurisdiction of 1st respondent village panchayat, namely, Thappukundu Panchayat, Theni District.

2.Petitioner purchased a piece of land admeasuring 2 acres and 22 cents pursuant to a registered sale deed. Petitioner submitted a proposal to Tamil Nadu Electricity Board (hereinafter referred to as 'TNEB') for installation of one number of 1500 KW wind electric generator. TNEB classified wind electric generation as Group II project. TNEB also permitted wind electric generator to be tied with board's 22 KV Grid. Based on the sanction from TNEB, petitioner installed and commissioned a 1500 KW capacity wind electric generator over the said land. Electricity generated has been wheeled through TNEB grid and being sold to TANGEDCO under power purchase agreement.

3.Out of the blue, on 18th July 2012, petitioner was served with a notice, stating that

(a) petitioner has to obtain necessary permission for construction of 'factory', as contemplated under Section 160 of the Tamil Nadu Panchayat Act, 1994 (hereinafter referred to as 'the Act');

(b) building plan sanction has to be obtained as per Tamil Nadu Panchayat Buildings Rules 1997 for installment of wind mill;

(c) building tax has to be paid for wind mills in terms of Section 2(1-A) of the Act; and

(d) payment of professional tax for operating wind mill.

4.On receipt of the notice, petitioner filed a reply on 4th August 2012, showing cause as to how it is not required to get any permission or consent as contended in the notice. Various grounds have been taken by petitioner and in particular, as to how Section 160 of the Act shall not apply at all.

5.Despite this reply, the 1st respondent issued a memorandum on 18th February 2013 by rejecting all contentions raised in the reply and threatening to take appropriate action, if petitioner failed to apply and obtain building sanction plan and pay building tax and professional tax etc. It is this memorandum, that is impugned in this petition.

6.We informed no formal order on admission had been ordered. As counter has been filed and the matter being old, with the consent of Counsel, we decided to hear petition finally. Therefore, issue rule and rule made returnable forthwith.

7.By way of history, we need to note that there was a judgment of Single Judge of this Court in ***S.Muppidathi Vs. Chief Engineer, Non-Conventional Energy Sources (NCES), Tamil Nadu Electricity Board, Chennai and others*** reported in ***2012 (3) MLJ 6,*** in which the Single Judge held that Section 160 of the Act is applicable to a wind mill, which generates electricity and therefore, a factory involved in a manufacturing process. This judgment was delivered on 17th November 2011.

8.On 19th June 2012, another Single Judge of this Court in ***President of Gangaikondan, Manur Panchayat Union Vs. Chief Engineer, Non-Conventional Energy Sources (NCES), Tamil Nadu Electricity Board, Chennai and others in W.P.(MD)No.5000 of 2012*** (unreported) held that notice itself that was issued in that case was bad in law, because it had been issued by the Village Panchayat. He held only a Panchayat Union Council was the competent authority to grant permission for construction of a factory in terms of Section 160 of the Act. In fact, he had accepted the contention of petitioner, in that matter, that erection of wind mill is to be construed as installation of the machinery as contemplated under Section 160 of the Act.

9.In the Writ Petition that is before us today, a learned Single Judge of this Court had observed that in Gangaikondan Panchayat (supra), Single Judge has held that there is no requirement to take either licence or planning permission from the Panchayat, whereas Single Judge in Muppidathi's case (Supra) held that licence of the Panchayat is absolutely necessary for erection of wind mill. Therefore, he held that since there were two conflicting views expressed by two learned Single Judges of this Court on the point as to whether erection of wind mill requires permission of the local body, matter requires consideration by a Division Bench. Accordingly, matter is placed before us for hearing.

10.In the meanwhile, another Division Bench, vide judgment dated 7th March 2023 in the appeal that was filed under Clause 15 Letters Patent in W.A.(MD)No.765 of 2012 against unreported W.P.(MD)No.5000 of 2012, agreed with the view of the Single Judge therein that Village Panchayat is not the competent authority but only Panchayat Union Council is the competent authority to grant permission for construction of factory in terms of Section 160 of the Act. Therefore, the Division Bench set aside the notice. However, Division Bench had not gone into the issue of applicability of Section 160 of the Act for erection of wind mills.

11.Mr.Anirudh Krishnan, Counsel appearing for petitioner at the outset submitted that he would for the moment only press the ground that provisions of Section 160 of the Act are not applicable to the case at hand and consequently, no permission for construction of 'factory' as contemplated therein is required. Counsel says even if Section 172 of the Act is applicable, under which, if a village Panchayat is entitled to levy house tax in the village panchayat, still tax will be applicable only to the extent of the shed, where a person sits to monitor whether the wind mill is functioning properly. Counsel says that nobody has been employed for maintaining or operating wind mill erected, consequently, no professional tax is also payable.

12.At the same time, Counsel says if Section 2(14) of the Act, where 'house' is defined as building fit for human occupations, whether as a residence or otherwise, is applicable; tax payable should be only to the extent of the house and not for the wind mill. Counsel further states even assuming, without admitting, that wind mill area is taken to be a 'factory', still Section 160 will not be applicable.

13.Mr.P.Thilak Kumar, Government Pleader, relying on Muppidathi's case (supra), submitted that wind mill generates and transmits electricity and therefore, it will be covered under Section 160 of the Act, because Muppidathi's case says so.

14.At the outset, we need to say that in Muppidathi's case (supra) as recorded in paragraph No.16, Counsel for private respondent therein ie., wind mill owner, conceded that permission of the village panchayat is required for erecting wind mill in terms of Section 160 of the Act. Therefore, the Court did not have to go into the issue as to whether Section 160 of the Act was applicable for wind mills.

15.Mr.Anirudh Krishnan submits that Section 160 of the Act is not applicable and we would agree with him. Section 160 of the Act reads as under:-

"160.Permission for construction of factories and the installation of machinery.- No person shall, without the permission of the Panchayat Union Council in Panchayat Villages and except in accordance with the conditions specified in such permission,-

(a)construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or

(b)install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the Rules."

16.Therefore, under Section 160 of the Act, no person is permitted to construct or establish any factory, workshop or work place, in which it is proposed to employ steam power, water power or other mechanical power or electrical power or install any premises any machinery or manufacturing plant driven by any power as aforesaid without permission of the Panchayat Union Council in panchayat villages. Under Clause (b), when it says 'as aforesaid', it would be 'powers' as in clause (a), namely, steam power, water power or other mechanical power or electrical power. Therefore, the Section is very clear that permission of Panchayat Union Council is required only when a person proposes to establish any factory, workshop or work place and proposes to employ steam power, water power or other mechanical power or electrical power or installs any machinery or manufacturing plant driven by steam power, water power or other mechanical power or electrical power.

17.Therefore, even if a wind mill generates power to be transmitted to the grid of TNEB and that could be termed as manufacturing, still would it be covered under 160 of the Act. The Answer is 'No'. This is because under Section 160 of the Act to apply in a factory or workshop or work place, steam power, water power or other mechanical power or electrical power has to be employed and wind mill does not and for this to say 'it does not', we rely on paragraph No.18 of Muppidathi's case (supra), which reads as under”-

> *“18.In windmills, the wind passes through the airfoil Section of the blades and the lift produced due to the aerodynamics of the airfoil, generates a torque which is then transformed to electricity in the generator. In simple terms, a windmill converts the wind energy into mechanical energy of the turbine and it is then converted into electricity...”*

18.Therefore, in a windmill, wind passes through the airfoil section of the blades and the lift produced due to the aerodynamics of the airfoil, generates a torque, which is then transformed to electricity in the generator. A windmill converts wind energy into mechanical energy of the turbine and it is, then, converted into electricity. It does not employ either steam power or water power or other mechanical power or electrical power to convert wind energy into mechanical energy of turbine or to convert into the electricity. It does not use any of these powers even to generate a torque, which is transmitted to electricity in the generator.

19.While interpreting Section 160 of the Panchayat Act, we have to point out that the reason why the Panchayat Union Council has been empowered under that Section is because the usage of steam power, water power or other mechanical power or electrical power could be over the properties under the care of the Panchayat Union Council. To give an example, the electrical lines utilised for the purpose of the factory would run through the area over which the Panchayat Union Council has jurisdiction.

20.Similar would be the situation with respect to the usage of water power in the area. Apart from the above, we have to point out that a reading of *Muppidathi*'s judgment cited supra shows that the learned Judge had laid an emphasis on the term "factory manufacture and manufacturing process". We are of the view that the emphasis as per Section 160(a) is the word "**employ**".

21.A factory, within the meaning of Factories Act, need not always employ any of the four categories mentioned in Section 160(a) in its manufacturing process. It is not unknown of a factory using other kinds of power for the purpose of coming out with products. To give an example, a soap manufacturer had used bullocks for the purpose of rotating the wooden pestle towards manufacture of the oil cakes.

22.Section 160(a) contemplates a factory, workshop or workplace, which employs steam power, water power or other mechanical power or electrical power, to be covered by the Section. In case any factory, workshop or workplace does not utilise any of the aforesaid sources of power, then it is not covered under Section 160 and consequently, need not seek for permission from the Panchayat Union Council.

23.It is clarified by clause (b) of Section 160 of the Act that permission will be required, when machinery or manufacturing plant driven by any power as aforesaid, ie., steam power or water power or other mechanical power or electrical power is installed.

24.Noting as how the wind mill functions, it cannot be even termed 'machinery' or 'manufacturing plant' driven by any of the powers given in clause (a) of Section 160 of the Act and therefore, the provisions of Section 160 of the Act will not apply. If we note parts of the wind mill, as reproduced in paragraph No.18 of Muppidathi's case (supra), operating and electrical system is also used only to transmit electricity generated to the grid. Therefore, what a wind mill does is to generate wind power and does not employ steam power or water power or other mechanical power or electrical power. Therefore, Section 160 of the Act will not be applicable. Hence, we do not agree with the view taken by Single Judge in Muppidathi's case (supra).

25.Turning our attention to the plea on demand for house and professional taxes, we have to refer to Section 172 of the Act, which reads as under:-

"House Tax (1)The house-tax shall be levied on all houses in every Panchayat Village on the basis on which such tax was levied in the local area concerned immediately before the

commencement of this Act or on the basis of classified plinth area at the rates specified in Schedule I, as the Village Panchayat may adopt subject to the provisions of sub-section (3).

(2)The house-tax shall, subject to the prior payment of the land revenue, if any, due to the Government in respect of the site of the house, be a first charge upon the house and upon the movable property, if any, found within or upon the same and belonging to the person liable to such tax.

(3)The Government shall, by notification, determine in regard to any Panchayat Village or any class of Panchayat Villages whether the house-tax shall be levied every half-year or year and in so doing have regard to the following matters, namely: -

(a)the classification of the local areas under section 4;

(b)the annual receipts of the Village Panchayat;

(c)the population of the Panchayat Village and the predominant occupation of such population; and

(d)such other matters as may be prescribed.

(4)The Government may make rules providing for -

(a)the persons who shall be liable to pay the tax and the giving of notices of transfer of houses;

(b)the grant of vacancy and other remissions;

(c)the circumstances in which and the conditions subject to which, houses constructed, re-constructed or demolished, or situated in areas included in, or excluded from the Panchayat Village during any half-year or year, shall be liable or cease to be liable to the whole or any portion of the tax.

(5)If the occupier of a house pays the house-tax on behalf of the owner thereof, such occupier shall be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner."

26.What is a '*house'* is defined under Section 2(14) of the Act, which reads thus:-

"house means a building fit for human occupation, whether as a residence or otherwise, having a separate principal entrance from the common way and includes any shop, workshop or warehouse or any building used for garaging or parking buses or as a bus-stand."

27.'House' means a building fit for human occupation. Therefore, Mr.Anirudh Krishnan's submissions that petitioner had not employed any person for maintaining or operating wind mill erected and therefore, it cannot be treated as a house, cannot be accepted. To be a house, for the purpose of house tax, there is no requirement to employ anybody. It only requires a building fit for human occupation. 'Building' as provided under Section 2(1-A) of the Act includes a house, out-house, tent, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding 2.5 metres in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other materials whatsoever. So, as a small area for occupation has been erected, admittedly, alongside wind mill through which a person can monitor the functioning of the wind mill, we would agree with the revenue that the house tax is payable. We would clarify that the tax payable will be restricted to the shed as per the applicable rules.

28.That would leave the demand of professional tax. Before we go into that aspect, let us ascertain whether the notice issued is a valid notice. The impugned memorandum dated 18th February 2013 has been issued by the village Panchayat. Mr.P.Thilak Kumar, Government Pleader also states it is issued by the Panchayat and not by the Panchayat Union Council. Therefore, as held by this Court in Gangaikondan-1(SB) and Gangaikondan-2(DB), notice is bad in law. Consequently, notice is quashed and set aside and as the notice is quashed and set aside, we are not going into the issue of applicability of professional tax. Of course, we would clarify that notice, as it is issued in respect of demand of house tax under Section 172 of the Act, will be a valid notice because under Section 172(1) of the Act, it is the village Panchayat, that is, entitled for levying house tax on all houses in the panchayat village.

29.In view of the above finding, village panchayat may re-calculate the extent of house tax payable and issue notice in accordance with law.

30.Mr.Anirudh Krishnan states if such a fresh notice is received, subject to the objections on the calculation, the amounts will be paid within a period of four weeks. The said statement is accepted as an undertaking before this Court.

31.This Writ Petition stands disposed of in terms of above findings. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[K.R.SHRIRAM., C.J.] & [V.LAKSHMINARAYANAN, J.]

12.02.2025

NCC : Yes / No
Index : Yes / No
Yuva

To

1.The Chief Engineer,
Member (Generation),
Non-Conventional Energy Sources,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

2.The Secretary,
State of Tamil Nadu,
Rural Development and Local Administration Department, Fort St.George,
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THE HON'BLE CHIEF JUSTICE
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