
(2009) 11 MAD CK 0239
In the Madras High Court
Case No : Writ Petition No. 12992 of 2009

A.C. Raji

APPELLANT

Vs

The Chairman, Tamil Nadu Pollution Control Board and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Citation : (2009) 11 MAD CK 0239

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : P. Mani, for the Appellant; R. Ramanlal, for RR-1 and 2, Gandhi for D. Veerasekaran, for R-4 and S.N. Kirubanandam, Spl. G.P.(Forest) for R-5, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The Writ Petition is filed for issuance of a Writ of Mandamus, to direct the second respondent to consider the petitioner's representation, dated 15.4.2009, submitted on 16.4.2009 and to carry out re-survey of the noise level in the petitioner's Saw Mill (M/s. Velmurugan Saw Mill at D. No. 16/2-58, Kandasamy Nagar, Samrajpet, Mecheri, Salem District) within the time that may be fixed by the Court.

2. According to the petitioner, he has been running the Saw Mill by name, M/s. Velmurugan Saw Mill at D. No. 16/2-58, Kandasamy Nagar, Samrajpet, Mecheri, Salem District, since 1995, i.e. for the past 13 years, by obtaining licence from the local Panchayat. The licence was given by local Panchayat after getting no objection from the neighbours. Learned Counsel for the petitioner submits that subsequently, the licence of the petitioner has been cancelled on the ground that he has not obtained the consent from the Tamil Nadu Pollution Control Board and for that, the petitioner, after making appropriate rectification, has requested by way of representation, dated 15/16.4.2009 to the TNPCB to carry out the re-survey of the noise level in the petitioner's Saw Mill.

3. One Mr. Obli Chettiar, was sought to be impleaded as party-respondent No. 4, to oppose the Writ Petition and the State of Tamil Nadu, through its Secretary,

Environment and Forest Department, was also suo motu impleaded as fifth respondent to hear the matter. Both the respondents 4 and 5 have opposed the prayer in the Writ Petition.

4. It is brought to the notice of this Court that the Executive Officer, Mechery Special Village Panchayat, Mechery, Mettur Taluk, Salem District, by order dated 13.10.2005, cancelled the licence issued in favour of the petitioner for running the Saw Mill at the premises of the petitioner. The same was challenged by the petitioner in W.P. No. 34817 of 2005. The fourth respondent-Obli Chettiar being the neighbour, got himself impleaded in the said Writ Petition and opposed the case. This Court, after hearing the parties, by order dated 25.3.2009 in W.P. No. 34817 of 2005, dismissed the said Writ Petition on merits.

5. Learned Senior Counsel appearing for the fourth respondent-Obli Chettiar submits that the area in question is a residential area, and no commercial activities could be permitted in the area, and hence, the Saw Mill cannot be allowed to function in the area and that is the reason why the Special Village Panchayat cancelled the licence. In this background, this Court should not allow the TNPCB to grant the consent in favour of the petitioner.

6. Learned Counsel appearing on behalf of the fifth respondent-State of Tamil Nadu, through its Environment and Forest Department, referred to the order of the Supreme Court, dated 29.10.2002 in the case of "T.N. Godavarman Thirumalpad v. Union of India" in I.A. Nos. 276 with I.A. Nos. 413, 437, 453 & 454 in W.P.(C). No. 202 of 1995 and analogous cases reported in "Supreme Court on Forest Conservation" (Judgments, Orders and Commentaries on T.N. Godavarman Thirumalpad v. Union of India and Centre For Environment Law v. Union of India), Second Edition, by Universal Law Publishing Co. Pvt. Ltd. In the said case, the Supreme Court passed the following order:

3. No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

7. It is submitted that for opening of any Saw Mill, prior permission of the Central Empowered Committee is required. Without such permission and appropriate licence from the competent authority, no Saw Mill can be allowed to run in any of the area, particularly in the residential area.

8. We have heard the learned Counsel for the parties and perused the records.

9. Admittedly, the licence of the petitioner was cancelled as back as on 13.10.2005. The said order of cancellation was confirmed by this Court in W.P.

No. 34817 of 2005. Thereafter, the petitioner has not been granted any licence and no such licence can be granted without prior permission of the Central Empowered Committee, in view of the decision of the Supreme Court. In this background, we are of the view that the TNPCB cannot be directed at this stage to make any enquiry or decide the representation as was preferred by the petitioner and pending with the second respondent.

10. If the petitioner intends to run the Saw Mill, the petitioner may apply before the Central Empowered Committee for permission to open such Saw Mill. The Central Empowered Committee will decide the question of viability of opening of such Saw Mill and thereafter, if such permission is granted, the petitioner may apply for licence before the competent authority, i.e. the local Panchayat, and thereafter, the local Panchayat will decide the question of grant of licence, taking into consideration as to whether the Saw Mill the petitioner intends to run will be within the residential area or in the commercial area. If it is in the residential area, it is open for the local Village Panchayat to reject the prayer. However, if it is found to be in the commercial area, then, in that case, the local Village Panchayat may ask the petitioner to get the clearance from the TNPCB and only in such case, if the TNPCB grants clearance, the local Village Panchayat may issue licence in favour of the petitioner to run the Saw Mill. If one or other authority rejects the claim of the petitioner, then the authority will communicate the grounds to the petitioner.

11. With the above observations and directions, the Writ Petition is disposed of. No costs.