

(2016) 01 MAD CK 0132

In the Madras High Court

Case No : W.P. No. 18589 of 2015 and M.P. Nos. 1, 2 and 3 of 2015

Mani Malar Food Products Pvt. Ltd.

APPELLANT

Vs

The Commissioner-cum-Block Development Officer, Avinashi
Panchayat Union and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Citation : (2016) 01 MAD CK 0132

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Vijay Narayan, Senior Counsel for T.J. Lakshmi pathy, for the Appellant; R. Ravichandran, Additional Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

T.S. Sivagnanam, J.—1. Heard Mr. Vijaya Narayan, learned Senior Counsel for the petitioner; Mr. R. Ravichandran, learned Additional Government Pleader for the 1st respondent; Mr. R. Rajeswaran, learned Special Government Pleader for respondents 2 & 3; Mr. V. Anandhamoorthy, learned counsel for the 4th respondent; Mr. D. Gopal, learned counsel for the 5th respondent and Mr. S.K. Rameshwar, learned counsel for the 6th respondent and with the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner seeks to quash the proceedings issued by the 1st respondent dated 03.06.2015. This proceeding is not an order but only a show cause notice calling upon the petitioner as to why action should not be taken to lock and seal. The petitioner's factory which is engaged in manufacture of packaged drinking water.

3. Elaborate submissions have been made by the learned counsel on either side and several documents have been placed before this Court in the form of typed set of papers. However, the issue involved in this writ petition is lies in a narrow campus.

4. The challenge in the impugned notice is to primarily on the ground that the 1st respondent is attempting to foreclose the right of the petitioner to prosecute his appeal filed on 01.07.2015 before the 2nd respondent, District Collector, Tiruppur challenging the order dated 02.06.2015 passed by the 1st respondent. It is not in dispute that the said appeal is still pending before the District Collector and orders have not been passed.

5. The learned Additional Government Pleader appearing for the 1st respondent submitted that the appeal has been rejected and to support his submission, he has referred to a proceedings of the Assistant Director (Panchayats), Tiruppur dated 26.06.2015 in Na.Ka. No. 1755/2015/A3. On perusal of the said communication, it is seen that it is the proceedings of the Assistant Director (Panchayats), Tiruppur and not an order passed by the District Collector. That apart, it has not been addressed to the petitioner company and in fact, it is a reply given to from LN.P. Arumugam Mani, District Governor Lions Club, Tiruppur for his letter dated 04.06.2015. Therefore, this Court is not inclined to accept the submission of the learned counsel for the 1st respondent that the appeal filed by the petitioner has already been rejected.

6. Having held that the appeal is now pending before the District Collector for consideration, it has to be seen as to whether the merits of the matter have to be gone into at this juncture.

7. The learned Senior Counsel for the petitioner has drawn the attention of this Court to the communication of the 1st respondent dated 06.05.2015, in and by which, the 1st respondent informed the Managing Director of the petitioner that the following requirements are required to be fulfilled by them to establish the packaged drinking water unit, failing which, action would be initiated for locking and sealing the unit by exercising powers under Section 222 of the District Municipalities Act, 1994. The requirements which are to be complied with by the petitioner as stated in the communication dated 06.05.2015 of the 1st respondent is as follows:

8. It is the submission of the learned Senior Counsel for the petitioner that out of the 7 requirements, the petitioner has complied with 5 and with regard to the requirement for production of No Objection Certificate from the Pollution Control Board, it is the submission of the learned Senior Counsel for the petitioner that in the light of the interim orders granted by the National Green Tribunal, in its order dated 29.04.2015, consent is deemed to have been granted since the National Green Tribunal is monitoring the matter not only that of the petitioner unit, but nearly 900 such units and the National Green Tribunal has permitted the petitioner to extract ground water subject to certain stringent conditions. With regard to the other requirement which the petitioner has to comply regarding the building permission, it is submitted that the total land area is about 3 acres and the petitioner has building sanction for an extent of 1800 sq.ft. However, the built up area is 8000 sq.ft. and an application was submitted to the 4th respondent for granting planning permission. However, the 4th respondent

refused to receive the application which necessitated the petitioner to approach this Court by filing a writ petition and only after directions were issued, the application was received by the 4th respondent and has been forwarded to the 3rd respondent and has passed an order returning the application for certain compliances. On instructions, it is submitted by the learned Senior Counsel for the petitioner that the petitioner will re-submit the application complying with the returns within a period of one week. Therefore, it is submitted that out of the 7 conditions imposed by the 1st respondent, the petitioner has fulfilled 6 and so far as the building planning permission is concerned, the same is under consideration. With these facts, the learned Senior Counsel submitted that before even the District Collector could decide the petitioner's appeal petition filed against the order passed by the 1st respondent dated 02.06.2015, the 1st respondent is not justified in threatening to close down the unit by issuing the impugned notice dated 03.06.2015.

9. The learned Additional Government Pleader appearing for the 1st respondent as well as the other respondents reiterated the factual contentions and pointed out that the petitioner has not obtained any permission prior to establish from the unit and there cannot be any permission granted to the petitioner to operate the unit when admittedly the application for approvals have been submitted after the unit has been established. Further, it is submitted that merely because about 900 units operating in the area will be no reason to justify the act of the petitioner in operating a packaged drinking water unit extracting ground water from agricultural land without obtaining any permission. The learned counsel for the respondents submitted that the 5th respondent, who filed Public Interest Litigation before this Court in W.P. No. 12718 of 2010 and orders were passed by the Hon"ble First Bench on 11.03.2015 and only thereafter, the petitioner appears to have sought for permission and the question of running the industry without obtaining the requisite permission does not arise.

10. After hearing the learned counsel on either side and perusing the materials placed on record, as already pointed out, the issue involved in this writ petition which requires to be considered at this stage of the matter lies in a very narrow campus. Admittedly, the petitioner did not obtain any prior permission, it is not known as to whether there is any provision under the Pollution Control Laws to grant a post facto sanction. However, this Court does not wish to express any further opinion in this regard, since the National Green Tribunal is seized of the matter.

11. Be that as it may, in an order passed by the National Green Tribunal on 08.05.2015 though the Tribunal opined that "strictly speaking it is not the issue involved" is not within the jurisdiction of the Tribunal i.e., the issue relating to refusal to grant license by the 1st respondent Panchayat Union, nevertheless directed the Panchayat Union to consider the application as the Panchayat Union consented before the Tribunal to dispose of the application on merits. Pursuant thereto, the order dated 02.06.2015 has been passed rejecting the application

and in the said order dated 02.06.2015, the 1st respondent has stated that as against his order, an appeal lies to the District Collector, Tiruppur within 30 days from the date of the order, as per G.O. Ms. No. 141, Rural Development Department, dated 21.09.1999. The petitioner has filed an appeal before the District Collector which is now pending. As already observed, the order passed by the Assistant Director (Panchayat), Tiruppur dated 26.06.2015 is not an order rejecting the petitioner's appeal.

12. In the light of the above, it is appropriate for the District Collector to consider the appeal petition on merits and in accordance with law. It is stated that the appeal is kept pending on account of the pendency of this writ petition. When the 1st respondent, in his order dated 02.06.2015, has specifically stated that an appeal is maintainable before the District Collector and the appeal can be preferred within a period of 30 days, the 1st respondent was not justified in threatening to close down the unit by issuing the impugned notice dated 03.06.2015 well before 30 days period. Therefore, till the appeal is disposed of by the District Collector, it is necessary that the impugned notice dated 03.06.2015 is kept in abeyance. So far as the issues relating to the operation of the unit, the grant of electricity supply etc., they are all been monitored by the National Green Tribunal and therefore, this Court does not propose to make any observations on those aspects and it is for the parties to approach the Tribunal for necessary relief.

13. In the light of the above discussions, the Writ Petition is disposed of by directing the 2nd respondent to consider the appeal petition filed by the petitioner dated 01.07.2015 in Reference No. RL/Apl/2015 and pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representatives of the petitioner company and it is open to the 2nd respondent/District Collector also hear the public as well as the 5th respondent, call for the entire records from the 1st respondent and pass a reasoned order on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.