
(2011) 01 MAD CK 0464

In the Madras High Court

Case No : Writ Petition (MD) No. 13273 of 2010 and M.P. No. 1 of 2010

The Proprietor, Sulaimaniya Bone Mill

APPELLANT

Vs

Tamil Nadu Pollution Control Board

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 21(1), 25(7), 31(A)

Citation : (2011) 01 MAD CK 0464

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : A. Nister Hakeem, for the Appellant; R. Ramanlal Standing Counsel for Respondents 1, 2 and 4 and Haja Mohideen, for Respondent 3, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—Since common issues are involved in all these Writ Petitions, they were heard together and are disposed of by means of this Common Order by consent of all the learned Counsels.

2. These Writ Petitions are filed by the Proprietors, M/s. Sulaimaniya Bone Mill, M/s. Regina Package Industries and M/s. Palayathar Bone Mill respectively challenging the order of the Appellate Authority, Tamil Nadu Pollution Control Board, dated 08.09.2010 made in Appeal Nos. 78, 77 and 79 of 2010, confirming the order dated 28.04.2010 passed by the first Respondent and for a consequential direction to the first Respondent to issue renewal of consent order for the year 2010 - 2011.

3. The short facts necessary for the disposal of the Writ Petitions are as follows:

(i). The Petitioners bone Crushing Unit are functioning from 01.11.1986, 01.05.1998 and 14.12.1957 respectively in their respective premises. The Petitioner in W.P.(MD). No. 13273 of 2010 is producing crushed bone 25 tonne per month from raw bones. Likewise, the Petitioner in W.P.(MD). No. 13274 of 2010 is producing crushed bone 20 tonne per month, boiled hooked meal 10

tonne per month, boiled horns meal 15 tonne per month and mutton tallow 5 tonne per month from raw bones. Similarly, the Petitioner in W.P.(MD). No. 13275 of 2010 is producing bone meal 12 tonne per month from raw crushed bones.

(ii). The Pollution Control Board had issued consent order to the Petitioners unit under Water (P&CP) Act, 1974 and under Air (P&CP) Act, 1981, by its proceedings dated 23.03.1990, 24.09.1999 and 10.05.1991 respectively subject to certain conditions and the said consent was renewed to the Petitioners unit in W.P.(MD). Nos. 13273 and 13275 of 2010 up to 30.09.1998. Insofar as the Petitioner in W.P.(MD). No. 13273 of 2010 is concerned, the consent was not subsequently renewed. According to the Petitioners, they have submitted renewal applications by paying prescribed fee. However, the Pollution Control Board has not chosen to pass any order either granting or rejecting the request of renewal of consent and the said renewal applications are pending with the first Respondent - Pollution Control Board. The Petitioners are operating the units during the pendency of the applications seeking renewal of consent.

(iii). According to the Petitioners, due to some civil litigation with other industries, various complaints regarding functioning of the Petitioners unit relates to pollution were made and some of residents formed an association under the name and style of "Sornapuram Mettu Theru Nala Sangam" and started agitating for ratifying their unauthorized constructions and also for providing basic amenities like roads, pathway etc. The association also tried to interfere with the operation of the Petitioners unit and one of the parties in the Civil Suit instituted a Public Interest Litigation in W.P.(MD). No. 3982 of 2010 before a Division Bench of this Court.

(iv). In the said Writ Petition, on 25.03.2010 notice was ordered. During the pendency of the said Writ Petition, the first Respondent passed an order on 28.04.2010 u/s 31(A) of the Air (Prevention and Control of Pollution), Act, 1981, after issuing show cause notice on 22.02.2010. It is stated in the said order that on 07.04.2010, the second Respondent inspected the industrial premises and at that time, the submission of renewal application was stated, which was failed to be taken note of by the first Respondent while passing the orders of closure.

(v). Challenging the said orders, the Petitioners preferred W.P.(MD). Nos. 6726, 6725 and 6945 of 2010. A Division Bench of this Court, by order dated 13.05.2010, disposed of the said Writ Petitions granting liberty to the Petitioners to approach the Appellate Authority and file appeal and work out their remedies. The operation of the order dated 28.04.2010 passed by the first Respondent was ordered to be kept in abeyance for a period of four weeks from 13.05.2010 enabling the Petitioners to file appeal.

(vi). The third Respondent herein filed Review Application Nos. 44 and 43 of 2010 and prayed for reviewing the order dated 13.05.2010 made in W.P.(MD). Nos. 6726 and 6725 of 2010. The said Review Applications were also dismissed

by a Division Bench of this Court by order dated 09.06.2010. Thereafter, the Petitioners filed Appeal Nos. 78, 77 and 79 of 2010 respectively before the fourth Respondent - Appellate Authority, Tamil Nadu Pollution Control Board. The fourth Respondent rejected the said appeals on 08.09.2010 and confirmed the order of the first Respondent dated 28.04.2010.

4. The said individual orders dated 08.09.2010 passed by the fourth Respondent confirming the order of the first Respondent dated 28.04.2010 are challenged in these Writ Petitions.

5. The contentions of the learned Counsel for the Petitioners are that the Petitioners having applied for renewal by remitting renewal fee, the first Respondent is not justified in ordering closure of the units without passing any order on the renewal applications and pendency of renewal applications shall be treated as a renewal of consent. The Petitioners unit are functioning for the past several years and by the closure order passed, the employees working in the said units are put to serious prejudice.

6. The learned Counsel also submitted that on 06.05.2008, certain documents were sought for by the first Respondent to process the renewal of consent application and the same were also furnished by the Petitioners and still the first Respondent is keeping the renewal of consent application pending.

7. The learned Standing Counsel appearing for the Tamil Nadu Pollution Control Board, on the other hand, submitted that the said consent was renewed to the Petitioners unit in W.P.(MD). Nos. 13273 and 13275 of 2010 up to 30.09.1998. Insofar as the Petitioner in W.P.(MD). No. 13274 of 2010 is concerned, the consent was not renewed after 1999 and though the Petitioners paid renewal fee, no application in the prescribed format was submitted by the Petitioners, and therefore, on the basis of the inspection made, the units were issued with show cause notices by the District Environmental Engineer, Tirunelveli on 03.02.2004, 09.07.2004, 24.07.2006, 27.01.2006 and 22.02.2010 to the Petitioner in W.P. (MD). No. 13273 of 2010; 10.07.2004, 22.04.2009 and 22.02.2010 to the Petitioner in W.P.(MD). No. 13274 of 2010; and 03.02.2004, 31.01.2005, 24.07.2006, 20.12.2007, 27.01.2009 and 22.02.2010 to the Petitioner in W.P. (MD). No. 13275 of 2010. In the said notices, violations made by the Petitioners unit were pointed out and the same were not yet to be rectified.

8. The learned Standing Counsel also submitted that in spite of receipt of the said show cause notices, the Petitioners unit failed to take action to control odour nuisance due to their running of their unit. On 07.04.2010, the Petitioners unit were inspected while they were in operation. The units are surrounded by residential buildings. Frequent complaints were received against the Petitioners bone mill unit regarding odour nuisance. Therefore, the District Environmental Engineer recommended the Tamil Nadu Pollution Control Board to issue directions u/s 31(A) of the Air and Pollution Act, 1981, to disconnect power supply, and thereafter, the closure order was issued and disconnection of power supply under

the provisions of Section 31(A) of the Air and Pollution Act, 1981 was ordered and the power supply was also disconnected by the Tamil Nadu Electricity Board through its proceedings dated 28.04.2010.

9. Pursuant to the directions issued by the Division Bench of this Court in W.P. (MD). Nos. 6726, 6725 and 6945 of 2010, dated 13.05.2010, the Petitioners preferred appeals before the Appellate Authority and the said appeals were also dismissed on merits. Even after the order of the Appellate Authority, the Petitioners unit have not applied for renewal of consent. Since the consent was not renewed, the Petitioners have to apply for fresh consent and without any application, the units have paid consent fee alone. There is no provision to claim the deemed consent under the Air and Pollution Act and Section 25(7) of the Water Act alone provides for deemed consent. Hence, the Petitioners have to comply with the request made by the Tamil Nadu Pollution Control Board by submitting various documents, and thereafter only, the Pollution Control Board can process the same and pass appropriate orders.

10. The third Respondent, in these Writ Petitions, have also filed their separate counter affidavits and supported the stand taken by the Pollution Control Board.

11. The learned Counsel for the Petitioners as well as the learned Counsel for the respective Respondents submitted that with effect from 16.06.2010, the Petitioners unit are not functioning due to closure order and disconnection of power supply.

12. We have considered the rival submissions made by the learned Counsel appearing for the Petitioners and the learned Counsel appearing for the respective Respondents and perused the documents.

13. The point for consideration is whether the Petitioners are justified in praying to quash the order of closure passed by the first Respondent dated 28.04.2010 and the order passed by the Appellate Authority, viz., the fourth Respondent dated 08.09.2010 and are justified in seeking a direction to the first Respondent to issue renewal of consent order for the year 2010 - 2011.

14. It is an admitted fact that the units are bound to get consent order as required u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981. Admittedly, consent order was granted by the Tamil Nadu Pollution Control Board to run their bone crushing unit and the said consent was renewed to the Petitioners unit in W.P.(MD). Nos. 13273 and 13275 of 2010 up to 30.09.1998. Insofar as the Petitioner in W.P.(MD). No. 13274 of 2010 is concerned, the consent was not at all renewed. Even though the Petitioners have remitted fee for renewal of consent, which was received by the first Respondent, till date, no order either granting consent or rejecting the same is passed by the first Respondent, who is the Competent Authority.

15. It is the case of the first Respondent that on 07.04.2010, the Petitioners unit were inspected and during inspection, it was found that odour was felt in the

surrounding area of the Petitioners unit and there are residential buildings surrounding the units. It is also the case of the first Respondent that certain particulars were called for to consider the renewal of consent from the Petitioners. According to the Petitioners, some documents were furnished by the Petitioners and the same were disputed by Respondents 1 and 2. In the absence of a valid consent to run the units, the Petitioners are not entitled to run the units, particularly, when there is air pollution in the surrounding area of the Petitioners unit, which were found during inspection made on 07.04.2010. The closure order was passed after issuing show cause notices to the Petitioners. Section 21(1) of the Air (Prevention and Control of Pollution) Act, 1981 states that no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. Deeming provision, as contended by the learned Counsel for the Petitioners, will not apply to the Air (Prevention and Control of Pollution) Act, 1981. It is not the case of the Petitioners that there was no air pollution due to functioning of their unit. Even if there is consent given, the Pollution Control Board Authorities are empowered to inspect the units and find out whether the conditions contained in the consent order are complied with and is there any pollution. On inspection made on 07.04.2010, it was found that there was odour in the surrounding emanates from the Petitioners unit in the nearby residential area. Hence, on public interest, the impugned order dated 28.04.2010 was passed by the first Respondent, which was confirmed by the order of the fourth Respondent dated 08.09.2010 by stating valid reasons.

16. The payment of Demand Draft towards renewal fee is noted by the fourth Respondent. It is not the case of the first Respondent that the fee paid for renewal of consent has been returned to the Petitioners. Hence, the first Respondent is not justified in contending that no application in the prescribed format was submitted by the Petitioners. If that is the requirement under the Act, the first Respondent ought to have returned the Demand Draft submitted by the Petitioners towards renewal fee and having retained the said amount, any other details, which are required under the Act and Rules, can very well be demanded by the first Respondent from the Petitioners. In the communication, above referred to, the Petitioners were directed to submit certain particulars and according to the Petitioners, some of them were furnished.

17. Having regard to the said fact and the admitted position that the units are not operating from 16.06.2010, as no stay of closure order was passed pending appeals or during the pendency of these Writ Petitions, we are of the considered view that interest of justice would be met by directing the first Respondent to demand whatever is required under the Act for considering the request of the Petitioners for renewal of consent and pass necessary orders within a stipulated time.

18. Accordingly, we are not inclined to set aside the impugned orders and the Writ Petitions are disposed of in the following terms:

? The first Respondent is directed to demand whatever is required under the Air (Prevention and Control of Pollution) Act, 1981, for considering the request of the Petitioners seeking renewal of consent within a period of two weeks from the date of receipt of a copy of this order.

? The Petitioners are directed to submit those details to the first Respondent within a period of two weeks thereafter.

? The first Respondent is directed to consider all the documents, which the Petitioners are going to submit and pass necessary orders after hearing the Petitioners as well as the third Respondent in these Writ Petitions before deciding the said issue and the first Respondent shall pass final orders on merits and in accordance with law regarding renewal of consent within a period of four weeks from the date of receipt of documents from the Petitioners.

? It is made clear that we are not inclined to grant permission to the Petitioners unit to operate pending consideration of renewal of consent taking note of the fact that the units are not in operation right from 16.06.2010.

No costs. Consequently, connected Miscellaneous Petitions are closed.