

Madras High Court

Gunavathi Proprietrix Of ... vs The Chairman Tamil Nadu Pollution ... on 26 September, 2006

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Bench: A Shah, K Chandru

ORDER

K. Chandru, J.

1. The petitioner is the Proprietrix of Decorticating Unit situated at No. 34 and 36 Maninagaram Cross Street, Aruppukottai Town. In this writ petition, the petitioner challenges the order of the first respondent / Chairman of the Tamil Nadu Pollution Control Board dated 02.8.2006 wherein and by which the first respondent, by exercising his power under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, issued direction to the closure of the petitioner's unit and also stoppage of electricity with immediate effect and this order is impugned in this writ petition.

2. It is found from the impugned order that inspection of the petitioner's unit was conducted on 23.3.2006 and that the petitioner had not provided proper Air Pollution Control measures and the consent of the Board was also not obtained and also there are frequent complaints from the public against the dust pollution caused by the unit. It is admitted that the report of the inspection conducted on 23.3.2006 was not given to the petitioner and no show cause notice was issued before taking any action.

3. We have heard Mr. M. Ravikumar, the learned Counsel for the writ petitioner, Mr. Ramanlal for the respondents Tamil Nadu Pollution Control Board and have gone through the records.

4. Mr. Ramanlal, the learned Counsel for the respondents, submits that as against the said order, an appeal will lie with the appellate authority.

5. We are unable to agree with the said submission. The petitioner is legally entitled to carry on business, which she has been doing for the last 21 years. It is high-handed on the part of the respondents to order closure of the petitioner's unit without even observing the elementary norms. It can be seen from the affidavit filed in support of the petition that the petitioner has employed her family members and three persons are working in the said unit and they are not creating any pollution. It is also seen from the records that the petitioner's unit has been registered as a Small Scale Industry and the Government of Tamil Nadu vide order dated 30.11.1989 issued a Permanent Registration Certificate for the purpose of manufacturing Groundnut Kernels and also processing of raw rice flour for "Murukku". The petitioner has also produced proceedings issued by the Board vide B.P.Ms. No. 381 dated 06.4.1990 in terms of Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. In these proceedings, the small industries employing less than 20, which are listed out in the annexure to the order, have been exempted from the purview of the Pollution Act. Item Nos. 53 and 54 in the annexure squarely apply to the petitioner's establishment.

6. Under the above circumstances, it is highly doubtful as to whether any consent is required from the petitioner to run the industry. Even in the exemption order, it is stated that only if there is any objection from the surrounding Community and after verification, the facility given to the industry can be withdrawn. That is not the case in the present circumstances. On the other hand, it is seen from the affidavit that a neighbour of the petitioner, by name, one Rathinam had filed a suit in O.S. No. 359 of 1990 on the file of the District Munsif, Arupukkottai, on his behalf and on behalf of the public and the same was dismissed on 19.7.1995. The appeal, as against the said order, filed in A.S. No. 349 of 1996 was also dismissed on 13.10.1998 by the Sub-Court, Virudhunagar. Therefore, it is not open to the respondents to receive complaints from the neighbours, who might have given the same on personal grudge.

7. In the light of the above, the impugned order No. T16/TNPCBd/F-20215/VRD/OS/2006-1 dated 02.8.2006 is hereby set aside. The respondents are directed to inform the Tamil Nadu Electricity Board to restore the power connection to the petitioner's unit forthwith, if not already done. It is open to the first respondent to issue show cause notice to the petitioner in terms of law after taking into account the exemption granted to the industries in one of which the petitioner is carrying on business and after getting explanation from the petitioner and after affording opportunity to the petitioner, an order may be passed by the first respondent Board and the same may be communicated to the petitioner. If the order is adverse to the petitioner, the same shall not be given effect to, for a period of two weeks from the date of order.

8. The writ petition is allowed to the extent indicated above. However, there will be no order as to costs. Consequently, M.P. No. 1 of 2006 shall stand closed.