

The Proprietor Vs. the Chairman.

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Court : Chennai

Decided On : Mar-13-2012

Judge : Elipe Dharma Rao; M. Venugopal, Jj.

Appeal No. : Writ Petition No.12942 of 2011 with M.P.Nos.1 to 3 of 2011
W.P.No.12942 of 2011 and M.P.Nos.1 and 2/2011

Appellant : The Proprietor.

Respondent : The Chairman.

Advocate for Def. : Mrs.Rita Chandrasekaran, Adv.

Advocate for Pet/Ap. : Mr.V.Raghavachari, Adv.

Judgement :

ORDER

ELIPE DHARMA RAO, J.

1. The petitioner was issued with necessary consents by the first respondent on 13.11.2006 for establishment of a stone crushing unit at S.No.185/1 and 3, Jagir Karupalli Village, Denkanikota Taluk, Krishnagiri District.
2. Earlier, the first respondent/Tamil Nadu Pollution Control Board had issued guidelines for establishment of new/proposed stone crushing units, by B.P.No.4,

dated 2.7.2004 and B.P.No.55 dated 6.10.2005. As per the said Board Proceedings, no new/proposed stone crushes should be located within 500 metres from any National Highways or State Highways or 'inhabited site' or educational institutions and other public offices and religious importance and the minimum distance between new/proposed stone crushes should be 1 km., to avoid dust pollution influence of one over the other.

3. These two proceedings were challenged before this Court in W.P.No.1560 of 2006 and 12264 of 2006, by some affected crushing units and obtained an order of stay, dated 20.3.2006. Therefore, while granting consents in favour of the petitioner herein, a condition has been incorporated by the first respondent that 'the unit shall adhere to the final judgment of Hon'ble High Court, Chennai in W.P.No.1560/2006'. Even though, the earlier consent granted was upto 31.3.2009, it was thereafter renewed upto 30.9.2011. As this Court has upheld both the above said Board Proceedings, by the order dated 8.10.2010, the first respondent has served the impugned orders of revocation of the consents granted earlier in favour of the petitioner. Consequently, the second respondent/TNEB has come forward to disconnect the electricity connection granted in favour of the petitioner. Aggrieved, the petitioner has come forward to file this writ petition.

4. During the pendency of this writ petition, a Miscellaneous Petition in M.P.No.3 of 2011 has been filed by the petitioner therein, praying to implead them as party respondent to these proceedings. It is the contention of the proposed respondent that they are a Society registered under the Tamil Nadu Societies Registration Act and is actively involved in various issues concerning consumer affairs and the environment, having been started on 5.12.2004. It is also their case that they have corresponded extensively with the authorities regarding violations of law implicit in the setting up and functioning of the writ petitioner and also filed appeals before the Appellate Authority. A voluminous material has been placed before us by this proposed party, to show that they are fighting against the polluters in the locality. Considering all the facts and circumstances of the case and to hear all the parties concerned before passing any order in this matter, we permitted the proposed party also to advance their arguments in the matter. Accordingly, they have also, through their Advocate, advanced their extensive arguments, opposing the claim

of the writ petitioner, which we will deal with in due course, in this order. Therefore, we allow this Miscellaneous Petition, bringing the proposed party as respondent No.3 to these writ proceedings and they shall be referred to as such in this order.

5. It is the case of the writ petitioner that the consents granted to them should not have been cancelled by the first respondent, as they apply only to the 'new/proposed crushing units' and since the petitioner's crushing unit is already a 'running unit', the conditions insisted on by the first respondent in B.P.No.4, dated 2.7.2004 and B.P.No.55 dated 6.10.2005, will not be applicable to them. But, we are not in a position to accept this condition. As has rightly been pointed out on the part of the respondents, the original consents themselves have been granted to the petitioner, with a condition that they shall adhere to the orders of the High Court in W.P.No.1560/2006. The conditional consents have been granted to the petitioner, by the proceedings dated 13.11.2006, pursuant to the stay order granted by this Court in W.P.No.1560 of 2006, dated 20.3.2006. Just for the reason that the petitioner Unit is 'functioning' by the time the final order has been passed by this Court in W.P.No.1560 of 2006 on 8.10.2010, the petitioner unit cannot attain the status of a 'running unit' as they were, admittedly, a 'new unit' on the date of grant of first consent on 13.11.2006. The said contention of the petitioner Unit would have merited consideration, had the petitioner Unit was functioning even by the time the B.P.No.4, dated 2.7.2004 and B.P.No.55 dated 6.10.2005 were issued by the respondents 1 and 2. Therefore, when this Court has upheld the stand of the first respondent, enumerated in B.P.No.4, dated 2.7.2004 and B.P.No.55 dated 6.10.2005, in W.P.No.1560 of 2006, dated 8.10.2010, it goes without saying that the petitioner Unit shall abide by the terms of the said proceedings.

6. The main reason for revoking the consents by the first respondent is that the petitioner Unit was located at a distance of about 500 metres from an existing stone crusher M/s.Seven Hills Blue Metals, as it is running contrary to the condition imposed by the first respondent, to maintain a distance of one km. between a new/proposed crushing unit and an existing crushing unit.

7. Since, according to the writ petitioner, the distance criterion has been satisfied by them, as their unit and the said M/s.Seven Hills Blue Metals are separated by a hill, to assess the truth, by the order dated 18.7.2011, we have directed the Taluk Surveyor to inspect the site and submit a report. However, instead of filing a report, the Taluk Surveyor has submitted only a copy of the sketch. This report of the Taluk Surveyor was attacked by the learned counsel for the writ petitioner on the ground that the dividing hill was not taken into consideration by the Taluk Surveyor, who has merely noted in the sketch that the distance between the two stone crushers is 662 metres. Therefore, to put an end to the entire controversy, by the order dated 2.8.2011, we have directed the learned Principal District Judge, Krishnagiri to depute a person of his own and conduct survey by measuring the distance between the two stone crushing units with the help of the Taluk Surveyor and to submit a report. Accordingly, the learned Principal District Judge has appointed an Advocate-Commissioner, who has inspected the property and submitted his report along with a sketch drawn by Taluk Deputy Inspector of Survey, Denkanikota.

8. In his report, at Para No.2, the Advocate-Commissioner has observed as follows:

It is only a heap of big rocks and it cannot be termed as a big mountain. I have measured its height with the help of Altimeter and the height of the hillock is 251 feet. The sea level from the bottom of the hillock is 2,143 and the sea level in the top of the hillock is 2,394, by this way I calculated the height of the hillock is 251 feet. The distance between the two crushers directly across the hillock is 660.4 meters and the distance in between the two crushers though the regular road on ground is 1032 mts....

9. This report of the learned Advocate-Commissioner was attacked by the third respondent on the ground that they were not given any notice by the learned Advocate-Commissioner. But, it is to be pointed out that the third respondent's petition in M.P.No.3 of 2011, to implead them as party respondent to these proceedings, was pending on the date when the Advocate Commissioner visited the crushing units on 21.8.2011 and they were not brought on record as party

respondents, so as to expect a notice from the Advocate-Commissioner. Therefore, we cannot appreciate this ground urged on the part of the third respondent.

10. Be that as it may, now all the respondents placed reliance on this report of the Advocate-Commissioner, to justify their stand that the petitioner's crushing unit is not separated by a mandatory distance of 1 km. from the existing crushing unit M/s. Seven Hills Blue Metals and hence, the prayer of the writ petitioner should be ousted.

11. Mr. V. Raghavachari, the learned counsel for the petitioner would take an exception to the way in which the measurement has been conducted by the Advocate-Commissioner, so as to say that both the units are at a distance of only 660.4 metres. To pooh-pooh the method of measurement adopted by the learned Advocate Commissioner, the learned counsel for the petitioner, arguing that admittedly both the units are separated by a hillock, would rely on the methods to be adopted for 'measurement of the obstructed lines in field', as explained and illustrated in Lesson No. 12 of the Manual of Land Survey and Boundaries Act, 1923, penned by M. Meenakshisundaram, Retired Deputy Director of Survey and Land Records Survey Department, Madurai and published by Giri Law House, 55-A/314, Cherry Road, Salem-636007.

12. In this illustration, it has been narrated with diagrams as to how the obstructions in line be measured, giving four scientific methods. From all these four methods, it is clear that when there is an obstruction in measuring two objects, linear measurement should not be adopted, since it will have the effect of ignoring the obstruction. In the case on hand, admittedly, a hillock is separating both the crushing units. But, the Advocate-Commissioner, as could be seen from the drawing, has adopted a linear measurement so as to arrive at his conclusion that both the units are at a distance of only 660.4 metres. In fact, this is what had been done even by the Taluk Surveyor, while filing his sketch. Had the Advocate-Commissioner or, for that matter the Taluk Surveyor, adopted the scientific method of measuring both the units, since both the units are separated by a hillock, no doubt, the distance between both the units would be much more higher than what

has been arrived at by them, crossing the mandatory distance of 1 km.

13. An argument has been advanced on the part of the third respondent that this methodology argued on the part of the writ petitioner should not be taken into consideration and this Court must take into consideration only the pollution effect in the locality. No doubt, the criterion of maintaining a distance of 1 km between two units has been introduced by the first respondent only to combat pollution. When this Court is of the strong view that this distance criterion has been satisfied by the petitioner Unit, taking into consideration the fact that the Advocate-Commissioner and the Taluk Surveyor have not adopted the scientific method, this disparate argument advanced on the part of the third respondent merits no consideration. When a particular thing has to be done in a particular manner, doing things in any other manner would merit no acceptance. Since the Advocate Commissioner and the Taluk Surveyor have not adopted the scientific method and since the material on record would clearly establish the fact that had the scientific method of measuring the distance is adopted, the distance between both the Units would be much more than what has been reported on the part of the Advocate Commissioner and the Taluk Surveyor, crossing the mandatory distance of 1 km., we see no merit in the contentions urged on the part any of the respondents. Therefore, this writ petition merit acceptance.

14. Before parting, it must be stated that allegations and counter allegations have been made by the petitioner and the third respondent against each other, branding each other as a law flouter. Since the subject matter is only with regard to the revocation of consents granted in favour of the writ petitioner, which, on dissection of the entire materials placed on record, we found to be unjustified, we are not traversing into these allegations and counter allegations made by the petitioner and the third respondent against each other. However, it is made clear that any illegality or irregularity is found on the part of the petitioner in running his unit, we have no doubt that the authorities concerned will act in accordance with law. For all the above reasons and discussions, this writ petition is allowed. since it is brought to our notice that pursuant to the impugned orders, the petitioner's crushing activities came to a grinding halt, the respondents 1 and 2 are directed to issue necessary consents/orders for re-commencement of the crushing work by

the petitioner, within eight weeks from the date of receipt of a copy of this order.
No costs. Consequently, M.P.Nos.1 and 2 of 2011 are closed.

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