

Madras High Court

B.Ramkumar Adityan vs The Secretary on 10 April, 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.8580 of 2019

and

W.M.P.(MD)No.6696 of 2019

B.Ramkumar Adityan : Petitioner

Vs.

1.The Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi 110 003.

2.The Additional Chief Secretary,
Home Department,
Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

3.The Additional Chief Secretary,
Highways and Minor Ports Department,
Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

4.The Principal Secretary,
Energy Department,
Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

5.The Principal Secretary,
Environment & Forest Department,
Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

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6.The Principal Secretary,
Animal Husbandry & Fisheries Department,
Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

- 7.The Chairman,
Tamil Nadu Electricity Board Limited,
Anna Salai, Chennai 600 002.
- 8.The Chairman,
TANGEDCO, 5th Floor Western Wing,
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002.
- 9.The Chairman,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi 110 049.
- 10.The Chairman,
Tamil Ndu Pollution Control Board,
No.76, Mount Road,
Guindy, Chennai 600 032.
- 11.The General Manager,
Southern Railways,
Park Town, Chennai 600 003.
- 12.The District Collector,
Thoothukudi District,
Korampallam, Thoothukudi 628 101.
- 13.The President & Chief Executive Officer,
Udangudi Power Corporation Ltd.,
TNEB Complex, No.144, Anna Salai,
Chennai 600 002.
- 14.The Chairman,
V.O.Chidambaranar Port Trust,
Thoothukudi 628 004.

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- 15.The Chairman,
ITD Cementation India Limited,
National Plastic Building,
A Subhash Road,
Paranjape B Scheme,
Vile Parle (East),
Mumbai 400 057.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus to direct the respondents 2, 4, 8, 12 and 13 to abandon the construction of the Coal Jetty at the 2 x 669 MW Udangudi Super Critical Thermal

Power Project situated at Udangudi Village, Tiruchendur Taluk,
Thoothukudi District.

For Petitioner : Mr.Karthick Subramanian
For Respondent 1 : Mr.M.Ashok Kumar
Senior Central Govt. Standing Counsel
For Respondents : Mr.A.K.Baskarapandian
2 to 6 & 12 Special Government Pleader
For Respondent 10 : Mr.Vasanth Kumar

ORDER

(Order of the Court was made by S.S.SUNDAR, J.) This Writ Petition is filed as a Public Interest Litigation by the petitioner who is an Advocate by profession for issuing a Writ of Mandamus directing the respondents 2, 4, 8, 12 and 13 to abandon the construction of the Coal Jetty at 2 x 660 MW Udangudi Super Critical Thermal Power Project in Udangudi Village, Thiruchendur Taluk, Thoothukudi District.

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2.The petitioner states that the 13th respondent is a joint venture company of respondents 8 & 9, namely, TANGEDCO and Bharat Heavy Electricals Limited. After signing a memorandum of understanding, the respondents 8 and 9 stated to have planned for establishment of 2 X 800 MW Super Critical Technology Power Plant in 2007 at the estimated cost of Rs.9,083 Crores. It is stated by the petitioner that the petitioner approached the first respondent namely the Ministry of Environment, Forest and Climate Change and obtained information that the joint venture company has obtained an environmental clearance by projecting its requirement with 30% domestic coal and 70% imported coal (from Indonesia). The petitioner further states that when public hearing was conducted way back in 07.02.2009 M/s.TANGEDCO announced a public hearing that an annual requirement of coal for the 13 th respondent is 6.74 million tonne and that about 30% of coal will be imported and 70% of coal would be procured from Indian Coal Fields. It is admitted even by the petitioner that the 8 th respondent has announced that the required coal for the project would be brought by forming a coal jetty on deep sea and conveyed through pipe conveyor and that it is going to be made in such a way that the construction of coal jetty will not affect fishing activities.
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3.The grievance of the petitioner for filing this present Writ Petition is that the fishermen community in Tiruchendur Taluk fears that their moving boats may hit in the piles and foundation of the coal jetty in case of unexpected heavy winds. The further apprehension is that the construction of coal jetty in the proposed area will damage marine ecology. The petitioner further states that the fishermen from nearby hamlets will be affected by the concrete structures and the pollution that may be caused while handling coal at the coal jetty. It is also stated that fishermen of the locality conducted lots of demonstrations against the construction of coal jetty and several cases have been registered against the protesters who have raised their voices against the upcoming coal

jetty for the proposed plant.

4.The petitioner has listed many ecological, environmental and socio-economic problems by allowing the coal jetty to be constructed for the 13th respondent. The petitioner has produced several materials about 4 x 660 MW Udangudi Super Critical Thermal Power Plant and the proceedings of first respondent regarding environmental clearance obtained for the project and the consent order by the pollution control board that was issued to the Udangudi Power Corporation Limited both under Air and Water Acts. From the materials produced by the petitioner before this <http://www.judis.nic.in> Court, this Court is unable to find any adverse impacts affecting the livelihood of the fishermen community or the public on account of the construction of coal jetty very near to the project site. The petitioner himself has admitted the fact that clearance have been obtained from the first respondent showing the construction of coal jetty in future. The Government has spent enormous amount towards implementation of the project purely in public interest. The coal is the major component and it is the only raw material for production of electric energy from thermal power stations. The constructions of coal jetty very near the plant is an important aspect. The alternative suggested by the petitioner that the coal can be transported from port through road does not appear to be wise and the petitioner who is not an expert is not competent to advise the Government on policy matters. The power plant established by the 13th respondent is very important for the State and the viability of the project is also important. The petitioner is only a practising advocate and not an expert to come with suggestions merely for the convenience of fishermen community or other sections of public. In the entire affidavit, the petitioner has not whispered any statutory violations or regulations. No public interest litigation can be entertained by mere asking. It is well settled that the petitioner in a pro bono publico is expected to do <http://www.judis.nic.in> some search before coming to Court. Except the lengthy affidavit filed by the petitioner containing informations that can be gathered through internet and other source, no possible injury particularly legal injury to any section of public is established by materials worth relying.

5.The petitioner has come forward with this litigation in a casual and cavalier fashion without having any expert knowledge. Unless the petitioner inspires the confidence of this Court and there are sufficient materials to show the bona fides of the petitioner, this Court cannot entertain every public interest litigation contrary to the principles and guidelines issued by the Hon'ble Supreme Court. The petitioner has earlier filed a Writ Petition in W.P.(MD)No.24738 of 2018 for issuing a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in respect of the Environmental and Coastal Regulation Zone (CRZ) clearance for establishing Captive Coal Jetty in No.F.No.11-48/2009-IA.III dated 06.06.2011 granted to the 13th Respondent, Environmental Clearance for 2 x 800 MW in No.J13012/19/2008-IA.II(T) dated 14.10.2013 granted to the 13th Respondent and subsequently downsizing to 2 x 660 MW in No.J 13012/19/2008-IA.II (T) dated 26.04.2017 which is valid upto 13.10.2020, Consent to Establish issued in Consent Order No. <http://www.judis.nic.in> 6218, dated 10.03.2014 under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (Central Act, 14 of 1981) and subsequently renewed on 29.09.2016, Consent to Establish issued in Consent Order No.6279, under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (Central Act 53 of 1988) and subsequently renewed on 29.09.2016 and quash the same as illegal. The petitioner withdrew the

Writ Petition with liberty to approach the National Green Tribunal. Even in the present Writ Petition, the petitioner has mostly raised some environmental issues. The petitioner has thereafter filed W.P.(MD)No.699 of 2019 for issuing Writ of Mandamus directing the respondents 5, 9, 10, 11 and 13 to abandon the construction of the Phase-I, Phase-II, Phase-III and Coal Jetty of the Udangudi Super Critical Thermal Power Project situated at Udangudi Village, Thiruchendur Taluk, Thoothukudi District and consequently, directing the respondents 4 and 11 to restore the water bodies, water catchment area and surplus water course of Ellappanaickan Tank and Kulasekarapattinam Tharuvai (Tank) situated at Thiruchendur Taluk, Thoothukudi District. This Court dismissed the Writ Petition with liberty to the petitioner to approach the National Green Tribunal. Once again the petitioner has filed the present Writ Petition for a similar relief in relation to <http://www.judis.nic.in> the construction of coal jetty. Though the petitioner has produced the earlier orders of this Court, the petitioner has not explained why this Writ Petition was filed for similar relief after getting liberty from this Court to approach the National Green Tribunal. This Court having regard to the facts narrated in the affidavit and the materials produced before this Court is of the view that the Writ Petition is either a publicity interest litigation or a litigation motivated for extraneous reasons. Hence, the same is liable to be dismissed and accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(N.K.K., J.) (S.S.S.R., J)
10.04.2019

Index : Yes / No
Internet : Yes / No
srm

To
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Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhavan, Jorbagh Road, New Delhi 110 003.

2.The Additional Chief Secretary, Home Department, Government of Tamil Nadu, St. George Fort, Chennai 600 009.

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AND S.S.SUNDAR, J.

srm ORDER MADE IN W.P.(MD)No.8580 of 2019 10.04.2019 <http://www.judis.nic.in>