

WA(MD) No.1599 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Appellate Jurisdiction)

Sunday, the Seventeenth day of September Two Thousand and Twenty Three

PRESENT

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.P(MD) No.12428 of 2023

in

WA(MD) No.1599 of 2023

against

WP(MD) No.22892 of 2023

1.The District Collector,
Tirunelveli District

2.The Commissioner of Police
Tirunelveli City

3. The Inspector of Police
Palayamkottai Police Station, Tirunelveli City

...Appellants/Respondents

Vs

Prakash

... Respondent /Writ Petitioner

PRAYER IN

Writ Appeal filed under Clause 15 of Letters Patent, praying to prefer this Memorandum of Grounds of Writ Appeal against the order dated 16.09.2023 made in W.P.(MD).No.22892 of 2023 on the file of this Court.



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Prayer in CMP(MD). 12428/ 2023 :

To pass an order of interim stay of the order dated 16.09.2023 in WP(MD).No. 22892 of 2023 on the file of this Court pending disposal of the Writ Appeal .

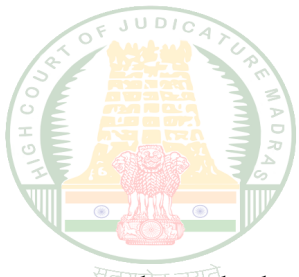
Prayer in WP(MD) No.22892 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus by directing the first respondent not to interfere into my right of profession /business by selling idols inclusive of Lord Vinayaga idols which has been guaranteed under Article 19(1)(g) of the Constitution of India.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Veerakathiravan, Additional Advocate General, Asst by Mr. S.Shaji Bino, Special Government Pleader for the petitioners and of Mr. S.Ravi, Senior Counsel for Mr.V.Ramasubbu and Mr. K.P.S.Palanivelrajan, Senior Counsel for devotee on behalf of the Respondent the court made the following order:-

[Order of the Court was made by S.S.SUNDAR, J.]

The Writ Appeal is filed against the order passed by the learned Single Judge in W.P(MD)No.22892 of 2023. The respondent filed the writ petition in W.P. (MD)No.22892 of 2023 for issuance of Writ of Mandamus, directing the first respondent not to interfere with his right of profession/business in selling idols inclusive of Lord Vinayaga idols which has been guaranteed under Article 19(1) (g) of Constitution of India.

2. The respondent/writ petitioner states that he migrated with his family



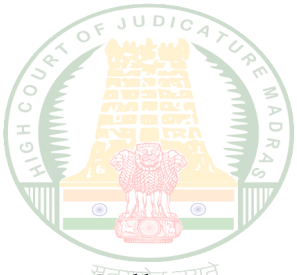
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and settled at Palayamkottai, Tirunelveli City, for making ornaments, articles using
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clay, washable colour powders, etc. Before the learned Single Judge as well as before this Court, the respondent/writ petitioner admitted that he is also making idols using Plaster of Paris, which is prohibited under Revised Guidelines for Idol Immersion by the Central Pollution Control Board, dated 12th May, 2020.

Based on the revised guidelines, the appellants/respondents have initiated action. The learned Single Judge allowed the Writ Petition, holding that the respondent/writ petitioner cannot be prevented from manufacturing or selling the idols using Plaster of Paris as the guidelines will be only regarding immersion of idols.

3. It is observed by the learned Single Judge that the respondent / writ petitioner as an artisan is entitled to sell the articles manufactured by him and that is the right guaranteed to him under Article 19(1)(g) of Constitution of India. Stating that the restraint on immersion is reasonable restriction, but the prevention of sale would amount to violation of petitioner's fundamental right, the petition was allowed by the learned Single Judge. As against the order of the learned Single Judge, allowing the Writ Petition, the respondents therein, viz., the District



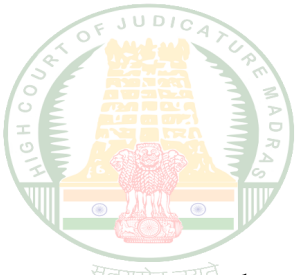
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Collector, Tirunleveli District, the Commissioner of Police, Tirunelveli City and the
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Inspector of Police, Palayamkottai Police Station, Tirunelveli City have preferred the above Writ Appeal.

4.This Court, though is convinced that the matter requires elaborate consideration so as to give a judgment which will be binding on all the stakeholders throughout the State, finds that now the interlocutory application for grant of stay should be considered on the admitted facts.

5. The respondent / Writ Petitioner is also manufacturing Ganesh idols and other idols using Plaster of Paris. Clause 2 of the Revised Guidelines, dated 12.05.2020, issued by the Central Pollution Control Board, specifically refers to permission of manufacturing idols only if it is made up of natural, biodegradable, eco-friendly raw materials without any toxic, inorganic raw materials (such as traditional virtuous clay and mud as well as free from Plaster of Paris (PoP), plastic and thermocol (polystyrene). There is a specific ban to manufacture of idols by Plaster of Paris. This has been made imperative in other Clauses as well by way of guidelines. The role of responsibility of Local and Urban Authorities has also been



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given in the guidelines. It is to be noted that while granting licenses or permission to
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the idol makers a list of permitted and non-permitted substances to be used for making / colouring / decorating idols has been provided to the Idol makers or craftsman or artisans.

6. The guideline also provided that only registered or licensed idol makers or craftsmen or artisans should be strictly allowed to make idols within the jurisdiction of the respective urban and local bodies as the case may be, in accordance with the guidelines. Since there is a prohibition/ban for manufacturing idols using Plaster of Paris (PoP), this Court cannot actually ignore the guidelines.

7. The learned Senior Counsel appearing for the respondent/Writ Petitioner would submit in the absence of statute prohibiting any license and regulating the idol manufacturers using Plaster of Paris, the guidelines will not have a statutory force. Since Article 19(1)(g) gives guarantee to every citizens in this Country to carry on any business unless it is regulated or prohibited by a statute or law, the appellants cannot take any action against the manufacturers of Vinayagar Idols or any other idols using Plaster of Paris.



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8. This Court is unable to agree with the submission of the learned Senior Counsel referring to Section 5 of Environment (Protection) Act, 1986. Section 5 of Environment (Protection) Act, 1986.

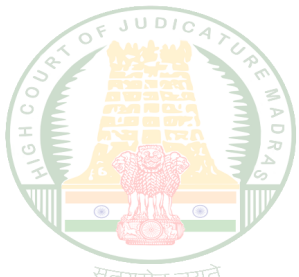
Section 5 of the Environment (Protection) Act, 1986 reads as follows:-

"5.Power to give directions: - Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct -

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b)stoppage or regulation of the supply of electricity or



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water or any other service.”
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9. Section 5 of the Environment (Protection) Act, 1986 only indicates that the Central Government may issue any direction irrespective of any other law. However, the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 specifically empower the Central Pollution Control Board as well as the State Pollution Control Board to lay down standards and to advise the Central and Law Enforcing Agencies to prevent or control water and air pollution.

10. Though the Central Pollution Control Board as well as the State Pollution Control Board are bound to follow the directions of Government, there is no direction by the Central or State Governments permitting manufacture of idols using Plaster of Paris. In that view of the matter, this Court is unable to find force in the argument of the learned Senior Counsel by referring Section 5 of the Environment (Protection) Act, 1986.

11. The National Green Tribunal in Original Application No.38 of 2021 (WZ) in



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the case of Shree Ganesh Murtikar Pratishtan & Ors. Vs. Union of India & Ors.,
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dated 05.07.2021, has considered the binding nature of Revised Guidelines of the Central Pollution Control Board, dated 12.05.2020. Paragraph No.8 of the National Green Tribunal has specifically dealt with the guidelines as well as the scope and upheld the validity of clause 2.0(i) of revised guidelines for idol immersion, dated 12.05.2020 issued by the Central Pollution Control Board insofar as it states “the idol made of Plaster of Paris (PoP) shall be banned”.

12. Before the National Green Tribunal, clause 2.0(i) of the revised guidelines for idol immersion dated 12.05.2020 issued by the Central Pollution Control Board banning the idol made of PoP was considered by the five members bench and the regulations and guidelines were upheld. Paragraph Nos.7 & 8 of the order of the National Green Tribunal reads as follows:

"7. It will be appropriate to reproduce the impugned direction which seeks to revise the pre-existing 2010 Guidelines on the subject. The relevant clause from the impugned Guidelines reproduced below:-



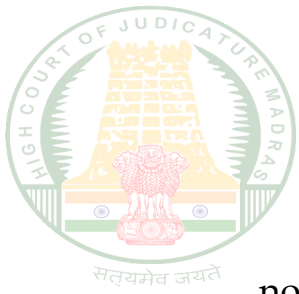
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"Idols made up of only natural, bio-degradable, eco-friendly raw materials without any toxic, inorganic raw materials (such as traditional virtuous clay and mud as well as free from Plaster of Paris (POP), plastic and thermocol (polystyrene) should be encouraged, allowed and promoted and idols made up of Plaster of Paris (POP) shall be banned."

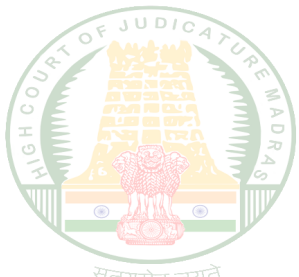
8. We find that the application under Section 14 -15 of the NGT Act can be filed only by a victim of damage to the environment in view of the judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*¹. Thus, the application is not maintainable. Moreover, as per 'Precautionary' principal of environmental law, required safeguards can be adopted in anticipation of damage even in absence of a scientific study. CPCB being an expert body, has issued guidelines in pursuance of order of the Bombay High Court and 2010 guidelines earlier issued on the subject, which were admittedly upheld, have been



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now revised. The same are to prevent immersion of idols containing harmful component which may result in degradation of water quality. While there may be some opinions about POP being less polluting or less harmful, the same cannot be taken as conclusive. There can be differing opinions on the subject. We may only note that POP idols need use of chemical paints which are certainly harmful for water quality. We note that the impugned revised guidelines are reiteration of NMCG statutory order under section 5 of the EP Act dated 16.9.2019 passed in (2018) 11 SCC 734 pursuance of orders of this Tribunal in the case of abatement of pollution of Yamuna and Ganga, being orders dated 13.1.2015 and 16.9.2015 in OA 6/2012 (Yamuna) and orders dated 11.4.2017 and 13.7.2017 in OA 200/2014, holding that immersion of idols in the rivers was an identified cause of pollution which was required to be controlled".

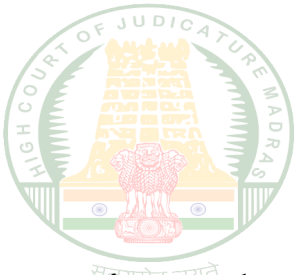


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13.It is to be noted that a Division Bench of this Court earlier in W.P.(MD) No.21124 of 2023 dated 31.08.2023, considered the issue relating to the immersion of idol in sea, rivers and other water resources in anywhere in Madurai and the revised guidelines for idol immersion issued by the Central Pollution Control Board and recorded the statement of the learned Government Pleader that these guidelines would be adhered to. The Division Bench has issued further direction that the authorities will adhere to the guidelines and implement the same. Even though the said order relates to immersion of idols, this Court has accepted to statutory backing for the revised guidelines. In these circumstances, this Court for the present find that the argument of the learned senior counsel for the respondent/petitioner that the guidelines can be implemented only regarding immersion and not regarding manufacturing activity, cannot be sustained.

14.As a matter of fact, the question as to making idols during Vinayaga Chaturthi festivals by using only pure clay and not by plaster of paris is no longer res integra and has been consistently reiterated by this Court in (i) V.Elangovan Vs. The Hon'ble Secretary and Ors., (W.P.No.25586 of 2004, dated 17.09.2004), (ii) K.R.Ramasamy @ Traffic Ramasamy Vs. The Chief Secretary & Ors. (W.P.No.21953



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of 2017, dated 23.08.2017) and (iii) Mr.Rama Boopathy Vs. The Director General of
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Police (W.P.No.22575 of 2017, dated 31.07.2019), etc.

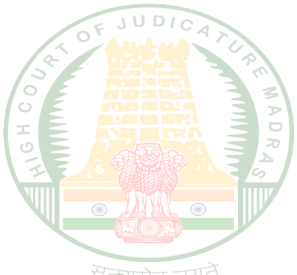
15. There shall be an order of interim stay of operation of the order, made in W.P.(MD)No.22892 of 2023, dated 16.09.2023. The appellants may take appropriate action against any one to prevent manufacturing, selling or immersion of idols made of plaster of paris or plastics etc. in adherence to the revised guidelines.

16. This Court will consider any other legal issues that may be raised by the learned counsel for the appellants as well as Mr.K.P.S.Palanivelrajan, learned Senior Counsel appearing for a devotee by name Balaji at the time of final disposal. Post the matter next week.

sd/-
17/09/2023

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17/ 09 /2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO
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Tirunelveli District
 - 2.The Commissioner of Police
Tirunelveli City
 3. The Inspector of Police
Palayamkottai Police Station, Tirunelveli City
- +1. C.C. to Spl, Government Pleader Advocate SR.No.13789

C.M.P(MD)No.12428 of 2023
in
WA(MD) No.1599 of 2023
Date :17/09/2023

AMS/19.09.2023 13P 5C

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