

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Tuesday, the First day of December Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice N.KIRUBAKARAN
and
The Hon`ble Mr.Justice B.PUGALENDHI

WP(MD) No.17277 of 2020
and
W.M.P. (MD)No.14467 of 2020

M.SATHEESH

... PETITIONER

Vs

- 1 THE SECRETARY TO GOVERNMENT OF INDIA,
UNION MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE,
INDIRAPARYAVARAN BHAVAN,
JORBAGH ROAD, NEW DELHI -110 003.
 - 2 THE CHAIRMAN,
41ST ESZ EXPERT COMMITTEE,
MINISTRY OF ENVIRONMENT AND FOREST, NEW DELHI.
 - 3 GOVERNMENT OF TAMILNADU,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
AND CHIEF WILDLIFE WARDEN,
PANAGAI MALIGAI, SAIDAPET, CHENNAI -600 015.
 - 4 THE DISTRICT COLLECTOR, KANYAKUMARI DISTRICT.
 - 5 THE DISTRICT FOREST OFFICER,
KANYAKUMARI DISTRICT.
- ... RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a writ of Certiorari, calling for records pertaining to Gazette Notification dated 22.09.2020 in CG-DL-E-23092020-221903 and quash the same.

Prayer in WMP(MD). 14467/ 2020 :

To grant an interim stay of Gazette Notification dated 22.09.2020 vide CG-DL-E-23092020-221903 pending disposal of this writ petition.

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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.P.PUHAZH GANDHI, Advocate for the petitioner and of Mrs.VICTORIA GOWRI, Assistant Solicitor General of India for the Respondents 1 & 2 and Mr.MUTHUGEETHAIYAN, Special Government Pleader for the Respondents 3 to 5, the court made the following order:-

(Order of the Court was made by **N.KIRUBAKARAN, J.**)

This writ petition is filed by the petitioner challenging the gazette notification issued by the Ministry of Environment, Forest and Climate Change, Government of India, in CG-DL-E-23092020-221903, dated 22.09.2020. According to the petitioner, a draft notification has been issued on 21.02.2020, by the Ministry of Environment, Forest and Climate Change for the purpose of reducing the size of the Kanyakumari Wild Life Sanctuary from 0-10 kms to 0-3 kms. By the said draft notification, objections, if any, were invited, within a period of 60 days, from the general public, from the draft notification and thereafter, public hearing has to be conducted.

2. Mr.P.Puhazh Gandhi, learned Counsel appearing for the petitioner would submit that though the draft notification was issued as early as on 21.02.2020, no public hearing was conducted, in view of the COVID-19 pandemic situation and the Standard Operating Procedure (SOP) announced by the Government, by imposing the nation wide lock-down.

3. That apart, according to the learned Counsel, the draft notification was not made available to the local people in the vernacular language, as per Rule 3 of the Notification of the Ministry of Environment and Forests, dated 19.01.2009 and the Official Memorandum of the Government of India, Ministry of Environment and Forests, dated 19.04.2010. Therefore, the learned Counsel prayed for interference.

4. Mrs.Victoria Gowri, learned Assistant Solicitor General of India takes notice on behalf of respondents 1 & 2 and Mr.Muthugeethaiyan, learned Special Government Pleader takes notice on behalf of respondents 3 to 5.

5. As per Rule 3 of the Notification of the Ministry of Environment and Forests, dated 19.01.2009 and the Official Memorandum of the Government of India, Ministry of Environment and Forests, dated 19.04.2010, as referred to by the learned Counsel appearing for the petitioner, notice of public hearing as well as the Draft Environmental Impact Assessment Report have to be advertised in one major National Daily and in one Regional Vernacular Daily in Official State Language, enabling the local people to understand the importance of the notification and to

notification dated 19.01.2009 is extracted as under:

"3.0 Notice of Public Hearing:

3.1 The Member-Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7 (seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent, and **advertise the same in one major National Daily and one Regional vernacular Daily / Official State Language.** A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses;"

6. Mere issuance of the notification in Hindi and English languages will not be sufficient to comply with the requirement of the aforesaid notification dated 19.01.2009 and the Official Memorandum dated 19.04.2010, unless it is issued in the vernacular languages. The Central Government cannot expect the people to know Hindi and English languages and it is expected of the Central Government to respect the languages of all the States and comply with the procedures. This Court expects the Central Government to issue all the notifications in the vernacular language of the States, which is the primary requirement, apart from Hindi and English languages. Otherwise, the very purpose of the notification will be lost. After all, languages are medium of communication for people.

7. Reduction of size of the wild life sanctuary from 0-10 kms to 0-3 kms would definitely affect the environment and the same was attempted, without any public hearing. If the notification is given effect to, definitely, it will affect the wild lives in the sanctuary. Like animals, many foreign birds are migrating to various sanctuaries across the Country. Birds, animals and other creatures are having every right to live in the world. This universe is meant not only for the humans, but also for every other creature. Since this is a serious issue affecting our environment, the matter has to be dealt with very seriously.

8. *Prima facie*, it is clear that the notification is not made known to the local people, as required. It is suffice to say that the local people are prevented from making any effective objection to the impugned notification. That apart, the present COVID-19 Virus has also made the issue very complex, as the people could not come out and give their objections. Therefore, there shall be an order of **interim stay** of the gazette notification issued by the Ministry of Environment, Forest and Climate Change, Government of India, in CG-DL-E-23092020-221903, dated 22.09.2020.

9. While granting the interim order, this Court is also taking into consideration the order dated 13.09.2019, passed by this Court

in W.P.(MD)No.19746 of 2019, wherein, the following direction was issued:

"5. This Writ Petition is disposed of with a direction to the respondents to conduct the public meeting in future strictly in accordance with the procedure contemplated under Rule 3 of Notification of the Ministry of Environment and Forests, dated 19.01.2009 and Official Memorandum of the Government of India, Ministry of Environment and Forests, dated 19.04.2010 and ensure that there is wide publicity and participation of all the stakeholders. No costs. Consequently, the connected miscellaneous petition is closed."

10. It is also brought to the notice of this Court by the learned Counsel for the petitioner that in view of the impugned notification, reducing the size of the sanctuary from 0-10 kms to 0-3 kms, the mining operations around the wildlife sanctuary, which were earlier stalled / closed after the intervention of the Court, are now re-opened and are functioning freely.

11. If mining licences have been granted pursuant to the impugned notification, be it for a new mining spot or for re-opening already closed ones, it is made clear that there shall not be any mining operation in and around the Kanyakumari Wildlife Sanctuary to an extent of 10 km, which is the pre-notification distance.

12. The learned Special Government Pleader is to furnish the details as to the mining licences provided, for establishing new mines and for re-opening the already closed mines, in and around Kanyakumari Wildlife Sanctuary, pursuant to the impugned notification, in the next date of hearing.

Post the matter on **14.12.2020**, along with W.P.(MD)No.19982 of 2020.

sd/-

01/12/2020

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/ /2020

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

TO

1 THE SECRETARY TO GOVERNMENT OF INDIA,
UNION MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE,
INDIRAPARYAVARAN BHAVAN,
JORBAGH ROAD, NEW DELHI -110 003.

<http://www.judis.nic.in>

2 THE CHAIRMAN,
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3 THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
AND CHIEF WILDLIFE WARDEN,
GOVERNMENT OF TAMILNADU,
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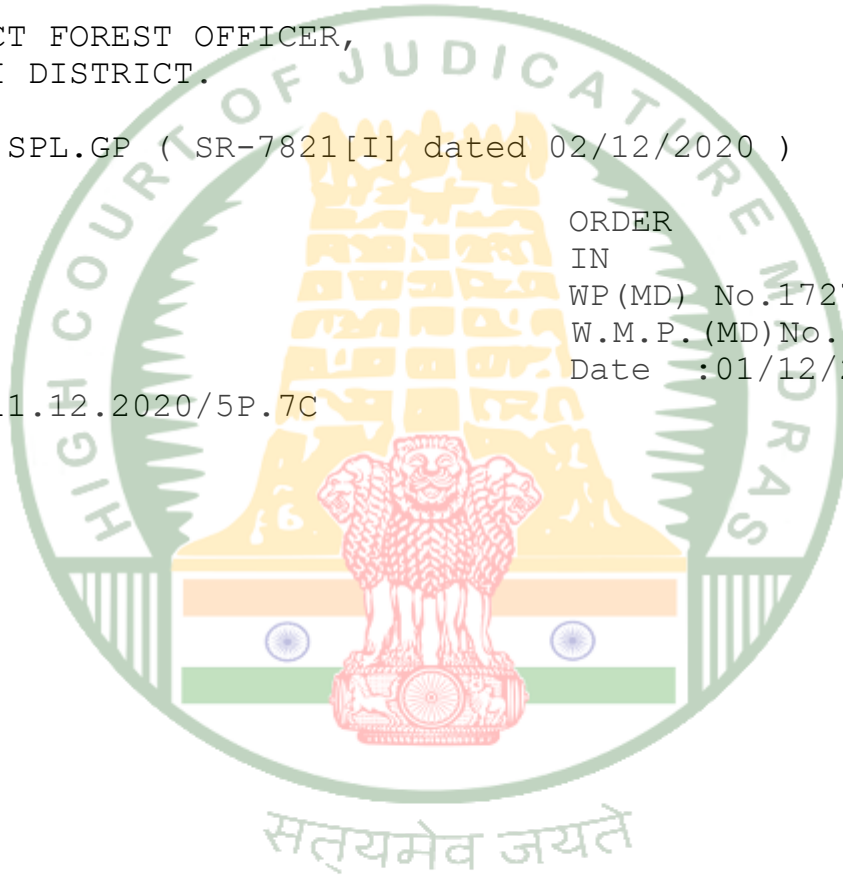
4 THE DISTRICT COLLECTOR,
KANYAKUMARI DISTRICT.

5 THE DISTRICT FOREST OFFICER,
KANYAKUMARI DISTRICT.

+1 CC to M/s.SPL.GP (SR-7821[I] dated 02/12/2020)

ORDER
IN
WP(MD) No.17277 of 2020 and
W.M.P.(MD)No.14467 of 2020
Date :01/12/2020

MS/PN/SAR-4/11.12.2020/5P.7C



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