



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/323/2021

Jumd Ete and 10 Ors.

S/o Shri Dugjum Ete, Village Darka, PO/PS Aalo. West Siang District, Arunachal Pradesh and Presently residing at Kamdi Village, Near R.K Mission School, Aalo

2: Jumsor Ete

Age:

Occupation :

3: Nyai Padu

Age:

Occupation :

4: Pegam Ete

Age:

Occupation :

5: Jumli Padu

Age:

Occupation :

6: Jumnya Ete

Age:

Occupation :

7: Rekar Ete

Age:

Occupation :

8: Jomya Padu

Age:

Occupation :

9: Toli Lollen

Age:

Occupation :

10: Minge Padu

Age:

Occupation :

11: Toyom Ori

Age:

Occupation

VERSUS

THE STATE OF AP and 7 Ors.

Represented through the Secretary, Department for Geology and Mining, Govt. of Arunachal Pradesh, Itanagar. 2:The Director

Age: 0

Occupation :

3:The Deputy Commissioner

Age: 0

Occupation :

4:The Arunachal Pradesh State Pollution Control Board (APSPCB)

Age: 0

Occupation :

5:The Chairman/Member Secretary

Age: 0

Occupation :

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6:The Secretary

Age: 0

Occupation :

7:The Divisional Forest Officer

Age: 0

Occupation :

8:M/s BLE Stone Crusher

Age: 0

Occupation

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : GA (AP)

Linked Case : WP(C)/122/2021

Limin Ete

Age: 52

Occupation :

Address:S/O LT. MINLI ETE

PROPRIETOR OF M/S BLE STONE CRASHER

A PERMANENT RESIDEN TOF VILLAGE DARKA

PO/PS AALO

WEST SIANG DISTRICT

AP.

VERSUS

The State of AP and 5 Others

Age: 0

Occupation :

Address:REPRESENTED THROUGH ITS THE SECRETARY

DEPARTMENT OF GEOLOGY AND MINING

GOVT. OF AP

ITANAGAR.

2:THE DIRECTOR

Age: 0

Occupation :
Address:DEPARTMENT OF GEOLOGY AND MINING
GOVT. OF AP
ITANAGAR.

3:THE DEPUTY COMMISSIONER

Age: 0

Occupation :
Address:WEST SIANG DISTRICT
AALO
AP.

4:THE ASSISTANT MINERAL DEVELOPMENT OFFICER (AMDO)

Age: 0

Occupation :
Address:WEST SIANG DISTRICT
AALO
AP.

5:Jumd Ete

Age: 0

Occupation :
Address:S/o Dugjum Ete

Permanent Resident of Darka Vill

PO Aalo

West Siang Distt. AP

Presently residing at Kamdi Vill. Near R.K. Mission School

Aalo West Siang Distt. AP

Advocate for : Kemo Lollen

Advocate for : GA (AP) appearing for The State of AP and 5 Others: Advocate ,

HON'BLE MR. SANJAY KUMAR MEDHI

JUDGMENT & ORDER (ORAL)

01.02.2024

Both these writ petitions being connected are disposed of by this common judgment and order.

- 2.** The first writ petition being WP (C) 323 (AP) 2021 has been filed by 11 (Eleven) numbers of petitioners with a common cause of action whereby challenge has been made to a trading licence No.WS/TL-37/2015 dated 31.03.2015 issued by the Deputy Commissioner, West Siang District, Aalo to the private respondent No. 8. The aforesaid licence was for running the business of Stone Crusher Unit by the respondent No. 8 in the name and style of M/s BLE Stone Crusher at Darka Village. The petitioners have also challenged the No Objection Certificate (for short, 'NOC') dated 10.11.2020 and the consent order, dated 26.08.2020 issued in favour of the said respondent No. 8. The primary contention of the petitioners is that the impugned action and the orders have been issued in violation of the Arunachal Pradesh Stone Crusher Guideline of 2012 (hereinafter referred to as Guidelines of 2012).
- 3.** On the other hand, the above private respondent No. 8 as the petitioner has filed WP (C) 122 (AP) 2021 challenging, *inter alia* the action of the Deputy Commissioner, West Siang District, Aalo in shutting down the Stone Crusher Unit vide order, dated 16.07.2020. It is submitted in the petition that the Unit was being run by following the due process of law and by a strength of a valid trading licence which was renewed from time to time and the Guidelines of 2012 were also duly followed
- 4.** I have heard Shri T. T. Tara, learned counsel for the petitioners in WP (C) 323 (AP) 2021. I have also heard Shri K. Lollen, learned counsel for the petitioner in WP (C) 122 (AP) 2021 who is also the private respondent No. 8 in the first writ petition (WP (C) 323 (AP) 2021). Shri I. Riram,

learned Addl. Sr. Govt. Advocate is present for the official respondents.

5. Shri Tara, the learned counsel has referred to the Guidelines of 2012 which were notified on 03.01.2013 in the Arunachal Pradesh Gazette for issuing NOC of Geology and Mining Department for establishment of Stone Crusher Unit in the State of Arunachal Pradesh, 2012 (hereinafter referred to as the Guidelines of 2012). Attention has been drawn to clause-1 requiring such NOC and under Clause 1.1.1, a duly project report is necessary. Under Clause 6.1, there is a requirement to follow minimum distance of the Stone Crusher Unit from sensitive and vulnerable places which have been specified thereunder.

6. For ready reference, the specification is extracted hereinbelow:-

Sl. No.	Distance from	Distance
6.1(a)	Class A and above town and cities limit	3km
6.1(b)	Other towns	2km
6.1(c)	Village/human habitation	1km
6.1(d)	Wildlife Sanctuary/reserve forest	5km or buffer zone declared for the same by the State Government
6.1(e)	National Highway/State Road (from centre line)	200meters
6.1(f)	Sensitive areas such as Educational Institute/Government/Office s/market/hospital/religious	1km

	places/tourist spots	
6.1(g)	River/lake /stream	500mtr
6.1(h)	Bridges/Hydro Power Dams/Water Supply diversion Structures etc.	1km

7. Shri Tara, has thereafter referred to the field spot verification report dated 21.02.2020 which was conducted by the Assistant Conservator of Forest of Forests pursuant to the Guidelines of 2012. As per the same, the Unit was found to be about 11mtrs from Sipu river whereas the minimum distance under the Guidelines should be 500mtrs. It was found that the same was about 442mtrs from the NEFTU whereas the requirement is of 1km from the Educational Institute. It has been further stated that it is less than 1km from RKM School teacher's quarters. However, the NOC was given on 10.11.2020 by the Department of Geology and Mining without taking into consideration the aforesaid field verification report. By referring to the Geo Appraisal Report, Shri Tara, the learned counsel for the petitioners has submitted that even the said report would show that there has been violation of the requirement of the Guidelines.

9. This Court has however noticed that under the column recommendations, it has been stated that the proposed location of the Crusher Unit shall be feasible subject to fulfilment of all the specification as mentioned in the Guidelines of 2012 and the Arunachal Pradesh Minor Mineral Concession Rules, 2002. The report however contains a remark of the Deputy Commissioner which states that the same was accepted and

therefore, recommendation was made for issue of NOC.

10. It is the contention of the learned counsel Shri Tara that such recommendation was apparently in violation of the Guidelines of 2012 which was one of the conditions attached by the committee making the remarks on recommendations. He accordingly submits that the impugned action is not sustainable in law and interference of this Court is called for.

11. Shri I. Riram, learned Addl. Sr. Govt. Advocate by referring to the affidavit-in-opposition, dated 25.02.2022 filed by respondent Nos. 1 & 2 has submitted that it is the Deputy Commissioner which is the competent authority to recommend on behalf of the Geo Appraisal Committee and such recommendation being there, the NOC was issued. It is further submitted by the learned Addl. Sr. Govt. Advocate that the concerned Stone Crusher Unit was shut down because of non-fulfilment of certain requirement which was, however, subsequently fulfilled by obtaining NOC from the competent authority and also from the concern persons in the vicinity.

12. Shri Riram, however, fairly submits that the field verification report dated 21.02.2020 had indeed pointed out certain non-fulfilment of the Guidelines of 2012.

13. Per contra, Shri K. Lollen, learned counsel for respondent No. 8 who has also filed the 2nd writ petition (WP (C) 122 (AP) 2021) has submitted that a trading licence was duly issued by the Deputy Commissioner on 31.03.2015 and at that point of time, there was no issue with regard to

violation of any conditions of the Guidelines or even on the legality of the process of issuance of the said licence. However, complaints were subsequently raised by the petitioners in the other case leading to shut down of the Stone Crusher Unit. However, after such shut down which is also the subject matter of challenge in his writ petition, the concern party had obtained the necessary NOC which was duly recommended by the competent authority after perusal of the Geo Appraisal Report. He submits that the Guidelines are directory in nature and it is the consent of the people of the vicinity which is relevant. In this case, even before issuance of the trading licence in the year, 2015, necessary NOC/ consent were obtained from all the stakeholders. He has further informed this Court that by an interim order passed in his writ petition, he is running the Stone Crusher Unit as the necessary formalities which were the reasons for shutting down had in the meantime fulfilled by him and this was taken into consideration by this Court while passing the interim order. He accordingly submits that the first writ petition (WP (C) 323 (AP) 2021) be dismissed and his writ petition (WP (C) 122 (AP) 2021) be allowed.

14. Rival submissions have been duly considered and the materials is placed before this Court have been carefully examined.

15. At the outset, this Court is reminded of the settled law that the power of judicial review is only to examine/ scrutinize the decision making process and not the merits of the decision. In other words, it is the lawfulness of the decision and not the soundness which can be subject matter of scrutiny.

16. From the facts of two cases, as projected, it appears that a trading licence was indeed issued by the competent authority on 31.03.2015. On the strength of the said licence, the said Stone Crusher Unit was being operated and the issue of the validity of the said licence was raised by certain persons of the locality who are the petitioners in the first writ petition (WP (C) 323 (AP) 2021). This led down to shut down of the Stone Crusher Unit as admittedly, the NOC was not issued which also requires a Geo Appraisal Report recommending such NOC. The records reveals that a Geo Appraisal Report was made on 07.08.2020 and the said recommendation was approved by the Deputy Commissioner who is the competent authority and NOC was recommended pursuant to which the NOC has been granted.

17. Though, apparently the formalities appeared to have been fulfilled, this Court had noticed that in the recommendation column of the Geo Appraisal Report dated 07.08.2020, there is a specific condition attached that the proposed location would be feasible subject to fulfilment, amongst others of the Guidelines of 2012. Under those circumstances, this Court is unable to accept the submissions made on behalf of the Crusher Unit that the Guidelines are directory in nature.

18. A perusal of the Guidelines would clearly show that under Clause-6, minimum distance from certain locations have been specified which have already been extracted above in this judgment. Such specification is obviously with the objective to reduce the adverse impact on the ecology and therefore, are sacrosanct. The field verification report by the Assistant

Conservator of Forest dated 21.02.2020 however reflects that at least 3 requirements of minimal distance had been grossly violated. Apart from the fact that there is no challenge to the aforesaid field verification report dated 21.02.2020, even the NOC which has been granted on 10.10.2020 would show that there has been violation of the requirement of minimal distance from certain locations which are barred of the Guidelines. This Court had also noticed that in spite of clear stipulation by the Geo Appraisal Committee in Serial No. 8 pertaining to recommendations that the proposed location would be feasible subject to fulfilment of all the specifications of the Guidelines of 2012, the Deputy Commissioner had accepted the report and recommended the same to the Government for consideration to issue the NOC. There is nothing on record to show that any exercise was made by the Deputy Commissioner on the aspect of fulfilment of the Guidelines of 2012 or as to why such requirement was done away with. Under those circumstances, the acceptance of the report by the Deputy Commissioner and recommendation for issue of NOC itself appears to be *prima facie* in violation of the Guidelines and also appears to be unreasonable and without any application of mind. Since the recommendation leading to issuance of the NOC is the root for allowing the Stone Crusher Unit to operate itself is held to be defective, the consequential action to allow the said Unit to be operated cannot be sustained.

19. In view of the above, WP (C) 323 (AP) 2021 stands allowed and WP (C) 122 (AP) 2021 is dismissed and the interim order passed earlier also stands vacated.

20. It is made clear that in case the matter is reconsidered, it has to be done only by following the requirement of the Guidelines and other Statutory requirements and strictly in accordance with law.

Both the writ petitions accordingly stands disposed of.

JUDGE

Comparing Assistant