

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 4864 of 2015 (G)

PETITIONER :

**M/S.DARSHAN GRANITES (P) LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
T.K. SUNDARESAN, LAKSHMI NIVAS,
VALAKODE P.O, PUNALUR.**

**BY SRI.S.SREEKUMAR,SENIOR ADVOCATE
ADV. SRI.MANOJ RAMASWAMY**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTEDBY THE PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT -695 001**
- 2. THE MEMBER SECRETARY,
KERALA STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY,
DEVI KRIPA, PALLIMUKKU, THIRUVANANTHAPURAM -695 024**
- 3. THE DISTRICT COLLECTOR,
PATHANAMTHITTA DISTRICT UNIT, COLLECTORATE,
PATHANAMTHITTA -689 645**
- 4. THE GEOLOGIST,
DISTRICT OFFICE, DEPARTMENT OF MINING & GEOLOGY,
MINI CIVIL STATION, ARANMULA P.O.,
PATHANAMTHITTA DISTRICT, PIN-689 533**
- 5. KALANJOOR GRAMA PANCHAYAT, KALANJOOR P.O.,
KALANJOOR-689 694, REPRESENTED BY THE SECRETARY.**

**R1,R3 & R4 BY GOVERNMENT PLEADER SRI.JUSTIN JACOB
R5 BY ADVS. SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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WP(C).No. 4864 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE QUARRYING LEASE DATED 26.11.2004**
- EXHIBIT P2: TRUE COPY OF THE CERTIFICATE OF CONSENT TO OPERATE ISSUED BY THE CHIEF ENVIRONMENTAL ENGINEER, REGIONAL OFFICE, KARALA STATE POLLUTION CONTROL BOARD.**
- EXHIBIT P3: TRUE COPY OF THE LICENCE NO.A9.1878/2014-15 DATED 3.4.20104 ISSUED BY THE 5TH RESPONDEDNT TO THE PETITIONER UNIT**
- EXHIBIT P4; TRUE COPY OF THE ORDER NO.A9-5706/2014 DATED 24.4.2014 ISSUED BY THE 5TH RESPONDENT**
- EXHIBIT P5: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER ALONG WITH DETAILS OF THE PARTICULARS SUBMITTED BEFORE THE 2ND RESPONDENT DATED 26.5.2014**
- EXHIBIT P6: TRUE COPY OF THE AFFIDAVIT DATED 4.7.2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT**
- EXHIBIT P6(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6**
- EXHIBIT P7: TRUE COPY OF TRHE RELEVANT PORTION OF THE MINUTES OF THE 33RD MEETING OF SEAC KERALA HELD ON 2ND & 3RD SEPTEMBER, 2014**
- EXHIBIT P8: TRUE COPY OF THE CERTIFICATE DATED 18.10.2014 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.**
- EXHIBIT P8(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P8**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

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DAMA SESHADRI NAIDU, J.

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W.P.(C) No.4864 of 2015

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Dated this the 2nd day of March, 2015

JUDGMENT

Briefly stated, the petitioner Company has been carrying on its quarrying operations in Survey No.31/1 part 1 and 2 in Block No.33 of Kalanjoor Village and Panchayat, Pathanamthitta District under Ext.P1 lease, which is valid up to 25.11.2016. The petitioner company has also obtained the necessary consent through Ext.P2 from the Kerala State Pollution Control Board. In compliance with statutory regulations, the petitioner has also obtained Ext.P3 licence from the 5th respondent Grama Panchayat with validity up to 31.03.2015.

2. In the light of what is said to be the consequent changes in the policy of the Government, the respondent Grama Panchayat issued Ext.P4 proceedings dated 24.04.2014 restricting the licence earlier issued through Ext.P3, up to 09.02.2015, thereby directing the petitioner to obtain the necessary sanction from the Environmental Department. Aggrieved thereby the petitioner filed the present writ petition.

3. The learned Senior Counsel appearing for the petitioner has strenuously contended that quarrying operations can be carried on in two ways, mainly based on a lease or based on a permit. According to him, the leases are issued on a long term basis whereas the permits are given on a short term basis. With reference to Ext.P1 lease, the learned Senior Counsel would contend that it is valid up to 27.11.2015, i.e., for a period of 12 years. Even the 5th respondent Grama Panchayat has initially issued Ext.P3 D&O Licence up to 31.03.2015, but later on a misconstruction of GO(MS) No.02/14/Env't. dated 21.02.2014, issued Ext.P4, contends the learned Senior counsel.

4. In elaboration of his submission, the learned Senior Counsel has submitted that the said Government Order has no manner of application to the petitioner, which has been carried on its operations based on long term lease. He has also further submitted that, after the issuance of the said Government Order, which is at best an executive instruction, the State has come up with the necessary Rules, namely the Kerala Minor Mineral Concession Rules 2015 (hereinafter referred to as the Rules 2015) through GO(P) No. 16/2015/ID dated 07.02.2015

prescribing certain procedure with regard to obtaining the Environmental Clearance.

5. Laying specific emphasis on Rules 25 to 28, Rule 30 and Rule 33, the learned Senior Counsel would contend that the requirement of obtaining the Environmental Clearance comes into picture either in the case of granting of a quarrying lease or its renewal thereof. In other words, once the lease has been subsisting, retrospectively no condition can be imposed insisting on production of any Environmental Clearance from the Environmental Impact Assessment Authority.

6. Per contra, the learned counsel appearing for the 5th respondent Grama Panchayat has strenuously contented that the 5th respondent Grama Panchayat has simply been guided by the extant statutory regulations such as GO(MS) No.02/14/Env. dated 21.02.2014 and also the Rules of 2015, which have already been adverted to. According to him, it is essential that not only the persons who require fresh lease or renewal thereof, even the persons or entities having a subsisting lease are required to obtain the necessary Environmental Clearance.

7. Heard the learned Senior Counsel for the petitioner, the learned Government Pleader and the learned counsel appearing for the respondents.

8. It appears that GO(MS) No.02/14/Env. dated 21.02.2014 has initially formed the basis for Ext.P4 communication; as such, it is essential to examine the scope of the said Government Order. As has been rightly contended by the learned Senior Counsel, in the absence of any statutory requirement, the change in policy sought to be effected by the Government through the said Government Order cannot be retrospective. Under the caption of 'Rock quarrying', the Government in the said G.O. has specified thus:-

"The system of permit being environmentally benign and carries the environmental safeguards as expounded in the recommendations of the MoEF extracted in para II of the order read as first paper above, and is statutorily approved and implemented since 1967, even as Environmental Clearance is being insisted for quarrying on long term lease, short time permits in small private holding have been sanctioned to be continued on the extent permit conditions up to 09.02.2015. Government order that while operating these quarries on permit, the permit holders shall be required to submit an undertaking that Environmental Clearance as may be required for such quarrying activities will be obtained from the State Environmental Impact Assessment Authority.

Leases will be issued or renewed only after obtaining prior Environmental Clearance and the same policy will apply to permits given by Revenue as well as Mining and Geology Departments.”

9. From the above extract it is evident that the emphasis has been placed on quarrying permits, which are issued on short term basis. That apart, it has been specifically observed that in the case of leases they would be issued or renewed only after obtaining prior Environmental Clearance.

10. If we examine Rule 33 of the Rules 2015, it is further evident that the pre-condition of obtaining Environmental Clearance is applicable only while granting fresh lease or renewing them. It is profitable to extract Rule 33 which reads as follows:-

33. Disposal of application for the grant or renewal of quarrying lease-(1) On receipt of the application for grant or renewal of quarrying lease for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area,

(2) On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all statutory licenses/clearances/No Objection Certificate etc. from

other statutory authorities concerned, the competent authority shall grant a quarrying lease within thirty days.

(3) No application shall be refused without affording the applicant an opportunity of being heard.

(4) Where the competent authority passes an order refusing to grant or renew a quarrying lease, the reason thereof shall be communicated through a speaking order within fifteen days of the date of the order."

11. Rule 33 is under Chapter V of the Rules, which deals with the grant of quarrying leases in respect of lands in which the mineral or mineral right vests in Government. At the very beginning of the said Chapter, Rule 25 prescribes the scope of said chapter by declaring that the provisions of the said chapter shall apply to the grant of quarrying leases in respect of lands in which the minor minerals vest exclusively in the Government. Rule 27 speaks of application for grant of quarrying lease; Rule 28 prescribes the application fee for quarrying lease, and Rule 30 thereof speaks of application for renewal of quarrying lease. Conspicuously none of the rules concerns themselves with the subsisting leases. In the absence of any clear limitation imposed on the right to carry on business either by the legislature or by the executive, in my considered view, no limitation can be read

into any provision, since the right to carry on business, be it in quarrying, is consecrated in Article 19(1)(g) of the Constitution, subject to the limitation imposed under Article 19(2) to (6) thereof.

12. In my considered view, the insistence of the 5th respondent Grama Panchayat, through Ext.P4, that even while the lease is subsisting, the petitioner is required to obtain the necessary Environmental Clearance, in terms of either GO(MS) No.02/14/Env. dated 21.02.2014 or the newly introduced Rule 2015, cannot be sustained.

13. Accordingly, in the facts and circumstances, Ext.P4 is set aside with a consequential direction to the 5th respondent Grama Panchayat to renew the D&O Licence, subject to the petitioner fulfilling all other statutory parameters.

With the above observation, the writ petition stands allowed. No order as to costs.

DAMA SESHADRI NAIDU, JUDGE

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