



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON:10.08.2015

ORDERS DELIVERED ON:19.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P. (MD) No.1973 of 2011
and
M.P. (MD) .No.1 of 2011

E.Suthanthiram

... Petitioner

Vs.

The District Collector,
Madurai, Madurai District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the respondent dated 27.01.2011 in Na.Ka.No.02/2011 mines and quash the same as illegal and further directing the respondent to execute the lease deed for quarrying licence in respect of the property in S.No.619 (Western side) in an extent of 1.25.0 hectare at Thottapanaickanoor Village, Usilampatti Taluk, Madurai District.

For Petitioner : Mr.G.Marruthiah

For respondent : Mr.S.Kumar, Additional Government Pleader

ORDER

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the respondent dated 27.01.2011 in Na.Ka.No.02/2011 mines and quash the same as illegal and further directing the respondent to execute the lease deed for quarrying licence in respect of the property in S.No.619 (Western side) in an extent of 1.25.0 hectare at Thottapanaickanoor Village, Usilampatti Taluk, Madurai District. By the said order, the respondent had rejected the quarrying licence granted to the petitioner and decided to go for a fresh tender for survey number stated above.

2. The case of the petitioner is that among the 12 tenderers who participated in the auction conducted by the respondent on 04.01.2011 for quarrying licence in respect of the property in S.No.619 (western side) to an extent of 1.25.0 hectare at Thottapanaickanoor Village, Usilampatti Taluk, Madurai District, he became the successful bidder. Thereafter, he paid 10% of the auction of amount on 04.01.2011 and he was granted seven

<https://theserviceselections.gov.in/theserviceselections/>

06.01.2011, the petitioner had paid the remaining bid amount of Rs.15,50,000/ to the respondent.



2.1. While the situation stood thus, as per Rule 8(5)(vii) of the Tamil Nadu Minor Minerals Concession Rules 1999, the respondent should grant the petitioner for seven days time to pay the remaining 90% of the bid amount and if the said remaining 90% bid amount is paid, thereafter, as per Rule 8(6)(c), the respondent shall send (i) a copy of the draft lease deed as in the Form in Appendix I to these Rules; and (ii) a map of the surveyed and demarcated area granted on lease to him and within a stipulated time the respondent shall ask the tenderer to submit the above documents with the balance amount indicated in the order towards security deposit i.e. 10% of the lease amount, other incidental payments and required stamp papers. After making the payment of remaining 90% bid amount as per Rule 8(5)(b)(vii) of the said rules, the petitioner was expecting the draft lease deed and map of surveyed and demarcated area at the hands of the respondent. Further, Rule 8(6)(c) of the said rules mandates that after the said Draft Lease the surveyed and demarcated map is sent and received by the tenderer, within a stipulated time, the respondent shall require the tenderer to pay 10% security deposit and incidental charges, tax and stamp papers. While so, the respondent without following and adhering to Rule 8(6)(c) of the said Act, the respondent vide his proceedings dated 27.01.2011 in Na.Ka.No.02/2011/Mineshas cancelled the quarry licence for want of payment 10% security deposit for a sum of Rs.1,75,000/-, income tax at Rs.35,000/-, other tax at Rs.625/- and the penalty amount of Rs.88,345/- in respect of another quarrying licence. That apart, the confirmation of quarrying licence order dated 04.01.2011 does not whisper about the said security deposit and the penalty amount. Aggrieved over the action of the respondent, the petitioner is before this Court.

3. The respondent has filed a detailed counter affidavit *inter alia* stating that the Writ Petitioner/highest bidder had mining due of Rs.88,345/- as penalty amount for the illicit quarrying and transportation of 123 unit of rough stone at SF.No.619 of Thottappanaickanoor village and also has not remitted the area assessment charges of Rs.625/-, income tax of Rs.35,000/- and Security Deposit of Rs.1,75,000/-. Hence, the tender cum auction conducted for the subject quarry had been rejected and subsequently, re-tender was called for. Further, the Writ Petitioner made a representation on 15.02.2011, by referring the penalty amount of Rs.88,345/- which was remitted on 14.02.2011 in respect of Roc.No.5283/08/A2 dated 16.10.2008 and requested to issue no dues certificate to enable him to participate in the re-tender cum re-auction, which has been scheduled on 18.02.2011. More over, the Writ Petitioner has suppressed the fact of penalty levied against him having the mining due of Rs.88,345/-. The Writ Petitioner was not eligible to participate in the tender cum auction since he is having mining due on the date of auction. The Writ Petitioner has suppressed the fact in the affidavit to the District Collector along with the application dated 24.11.2010. Hence, his offer was rejected and ultimately, prayed for the dismissal of this Writ Petition.

4. The learned counsel for the petitioner submitted that there is a gross violation to Rule 8(6)(c) of the Tamil Nadu Minor Mineral Concession Rules. Further, the confirmation order of the respondent does not disclose the details with regard to the payment of security deposit and the penalty amount and therefore, it is against the principles of natural justice. There is *mala fide* action on the part of the respondent in cancelling the tender granted to him. The alleged fine amount also is



not related to the present quarrying and there is no justification in the impugned order to cancel the quarrying licence granted to him.

5. *Per contra*, the Additional Govt. Pleader submitted that since the petitioner has suppressed the fine amount regarding the earlier quarrying licence granted to him, the subject tender was cancelled and therefore, the action of the respondent cannot be found fault with by the petitioner.

6. Notice was issued to the respondent on 23.02.2011 and the respondent was permitted to conduct auction as per schedule making it clear that the petitioner also could take part in the said auction without prejudice to his contention in the Writ Petition. However, in the said order, it was made clear that no confirmation shall be issued until further orders.

7. The primary contention of the petitioner is that the respondent has not followed Rule 8(6)(c) of the Tamil Nadu Minor Mineral Concession Rules. However, before venturing into the said submission, it is more relevant to extract Rule 8-(4)(a)(iii) of the Lease of quarries to private persons in respect of (granite), which is as follows:-

(iii) an affidavit showing the particulars of areas mineral-wise in each district of the State, which the applicant or any person jointly with him-

(i) already holds under a quarrying lease; (emphasis supplied)

(ii) already applied for but not yet granted;

(iii) is being applied for simultaneously;

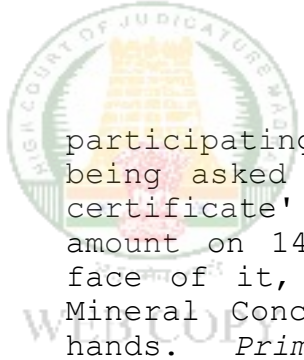
(iv) a valid mining dues clearance certificate obtained from the Collector of the District where the quarrying or mining lease area is situated in the Form prescribed Appendix-VII to these Rules for having paid the mining dues, such as royalty, seigniorage fee, lease amount, dead rent, surface rent, area assessment, penalty amount or any other dues payable under the Act or these Rules or under the lease deed or agreement already executed or entered into by the applicant:-

8. A bare perusal of the said provision would show that if there is any penalty for an applicant who is already having quarrying licence, the same has to be disclosed without fail to the respondent so as to enable him to consider the application as one of the participants in any tender.

9. Now, it is relevant to point out that the petitioner has sworn in an affidavit before the Notary, Usilampatti, on 16.11.2010. As against the column whether the petitioner already holds a quarrying lease, he has stated Nil. In the said affidavit, he has affirmed as follows:-

"I do not have any mining lease or quarry permission anywhere in the State of Tamil Nadu. Hence, there is no mining dues to be paid by me to the Government"

10. Admittedly, he has made a false affidavit before the Collector stating that he has no mining dues to be paid by him. Suppressing the said fact, he had participated in the tender called for by the respondent. He has violated the conditions stipulated. For the notice issued by the Revenue District Officer, Usilampatti, dated 16.10.2008, calling upon him to pay an amount of Rs.88,345/- for the illegal quarrying, neither the petitioner challenged the said order immediately nor paid the said amount to the respondent, before



participating in the tender called by the respondent on 23.10.2010. On being asked to pay the said amount alone and in order to get 'no due certificate' from the District Collector, the petitioner paid the penalty amount on 14.02.2011 for the offence committed in the year 2008. On the face of it, he has violated Rule 8-(4)(a)(iii) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Therefore, he has not come with clean hands. *Prima facie*, this Court can easily infer that the petitioner is not even eligible to participate in the tender called for by the respondent on 23.10.2010 followed by an auction on 04.01.2011, had the petitioner disclosed the actual facts before the respondent. On this aspect, in the ground No.5 also, the petitioner has given an evasive answer regarding the penalty amount paid by the petitioner.

11. Hence, this Court finds that the order of the respondent is perfectly in order and no warrant is required to quash the impugned order of the respondent dated 27.01.2011. Consequently, the respondent is at liberty to go for a fresh auction by following the Rules framed thereunder.

12. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The District Collector, Madurai, Madurai District.

+1cc to M/S.G.Marruthiah, Advocate in SR.No 48347

TS/25.08.2015/4P - 3C KBM/SAR -II

order made in
W.P. (MD) No.1973 of 2011

19.08.2015