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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.10322 of 2016

and

W.M.P (MD) Nos.8070 and 8071 of 2016

M/s.P.M.Granites,
Rep by its Managing Partner
A.Prabhu,
No.102/86, New No.2/131,
Keelaiyur Village & Post,
Melur Taluk, Madurai District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Industries Department,
Fort St., George,
Chennai 600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai 600 032.

3.The District Collector,
Dindigul District, Dindigul.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent G.O. bearing G.O.(D)No.61 Industries (MMB-2) Department dated 11.04.2016 pertaining to the petitioner's Patta land granite quarry measuring 1.71.5 hectares comprised in S.Nos.39/1B and 49/1B1 situated in V. PUDUKKOTTAI Village Vedasandur Taluk Dindigul District and quash the same.

For Petitioner : Mr.Mr.K.Ramakrishna Reddy
for S.Kadarkarai

For Respondents : Mr.B.Pugalendhi,
Additional Advocate General
assisted by Mr.N.S.Karthikeyan,
Additional Government Pleader.

ORDER

Challenging the order passed by the first respondent in G.O.(D)No.61, Industries (MMB-2) Department, dated 11.04.2016 cancelling the petitioner's lease, the present writ petition has been filed.



2. Heard Mr.K.Ramakrishna Reddy, learned counsel appearing for the petitioner and Mr.B.Pugalendhi, learned Additional Advocate General appearing for the respondents.

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3. The case of the petitioner, in brief, is as follows:-

The petitioner was granted with quarry lease to quarry granite in respect of the petitioner's lease hold patta lands measuring 1.71.5 hectares comprised in S.Nos.39/1B and 49/1B1 situated in V.Pudukottai Village, Vedasandur Taluk, Dindigul District vide G.O(3D)No.78, Industries (MMB-2), dated 16.10.2007 for a period of 20 years from 10.12.2007 to 09.10.2027. Pursuant to the order granting lease, the petitioner executed a lease agreement and commenced quarrying operations in the year 2007. While so, in the year 2013, on the basis of the direction issued by the third respondent, the Tahsildar, Vedasandur said to have inspected the petitioner's quarry and filed a report to the third respondent alleging number of violations. Thereafter, the third respondent directed the Revenue Divisional Officer, Palani to inspect the subject quarry and file a report. Based on the said direction, the Revenue Divisional Officer, Palani inspected the subject quarry and filed a report alleging that the petitioner has quarried 17150 cbm of granite from the poramboke lands situated nearby the petitioner's quarry and also removed 11047 cbm of granite from the safety area, in total, the petitioner has quarried 28197 cbm illegally. It is further stated that based on the said report, the third respondent issued a show cause notice to the petitioner on 24.07.2013 for the alleged illegal quarry. It is further stated that during the enquiry, the petitioner submitted his explanation and raised objection but without considering his objection, the third respondent passed an order levying penalty of Rs.1,65,59,200/- by an order dated 27.01.2014. Challenging the above said order, the petitioner filed a statutory appeal before the second respondent and the same is pending. It is further stated that since the third respondent refused to issue transport permits to the petitioner to transport the quarried mineral during the currency of lease, the petitioner filed a writ petition. It is further submitted that in the meantime, after levying the penalty, the third respondent sent recommendation to the second respondent to cancel the petitioner lease alleging number of violations. Thereafter, when the first respondent sent a notice to the petitioner calling upon him to appear for enquiry on 01.02.2016 without issuing any show cause notice and even copies of documents relied upon by the respondents were not furnished to him. Pursuant to the notice, the petitioner appeared before the respondent on 01.02.2016 and submitted a detailed submission and produced documentary evidence to show that the petitioner never indulged in any illegal quarry in the said area as alleged by the second and third respondents. It is further submitted



that in a writ petition filed by the petitioner, this Court directed the petitioner to appear before the first respondent on 14.03.2016 and directed the first respondent to dispose of the petitioner's appeal. Subsequently, the first respondent passed the impugned order dated 11.04.2016 cancelling the lease in a mechanical and arbitrary manner without considering the detailed reply filed by the petitioner and the material evidences produced before the first respondent and without giving any reasons whatsoever simply accepted the recommendations of the second and third respondents and cancelled the lease.

4. Challenging the above said order, the present writ petition has been filed, inter alia contending that the impugned order has been passed cancelling the lease granted to the petitioner, without issuing any show cause notice, without considering the detailed objections raised by the petitioner along with the material evidences to deny the allegations for cancelling the lease and that the first respondent mechanically accepted the recommendation of the second and third respondents, without passing a reasoned order simply cancelled the petitioner's lease in an arbitrary manner.

5. The respondents filed a detailed counter affidavit denying all the allegations. It is stated that since the petitioner involved in illegal quarrying, a penalty was imposed on the petitioner by the third respondent after conducting enquiry and against the order, the petitioner has filed an appeal which is still pending with the second respondent. Subsequently, during the course of the enquiry and inspection by the third respondent it was found that there were several violations and sent a proposal to the first respondent to cancel the lease granted in favour of the petitioner. The second respondent verified the report and recommended for the cancellation of lease in the letter dated 15.12.2015. Based on the recommendation of the second and third respondents, the first respondent called for files and also issued notice to the petitioner to offer his explanation. The petitioner also appeared before the respondents on 01.12.2016 and submitted his objection. In the meantime, the petitioner filed another writ petition before this Court in W.P.(MD)No.20339 of 2015 for the issuance of a Writ of Mandamus to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport quarried mineral from lease granted patta lands of the petitioner during the currency of the lease granted in favour of the petitioner in respect of the subject area. In the above writ petition, an order of interim stay of penalty was granted and directed the first respondent therein to consider the application of the petitioner and pass final orders within three weeks. Pursuant to the orders passed by this Court, a personal



hearing was given by the third respondent on 14.03.2016, on that date, the petitioner appeared and submitted his objections. It is further submitted that after pursuing all the materials available on record and the recommendation of the second respondent, the first respondent cancelled the lease granted to the petitioner. It is further stated that during the enquiry by the third respondent, the petitioner himself admitted his commission of violation in his explanation dated 30.09.2013 and requested the third respondent to impose lesser penalty. The first respondent, after careful perusal of report submitted by the third respondent dated 20.11.2015 and the recommendation of the second respondent dated 15.12.2015 issued a notice for enquiry as required under Rule 36 (5) (h) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and the Rules does not contemplate any show cause notice. It is further stated that even, as per the orders passed by this Court, the petitioner provided with another opportunity to appear for enquiry on 14.03.2016. Even though the petitioner earlier admitted his illegal quarrying operations, now, he cannot turn around to change his version after two years which cannot be accepted. It is further stated that the levy of penalty by the third respondent and the cancellation of lease are entirely different issues. As per the said Rule, without prejudice to any other penalty which may be imposed by the District Collector in respect of such breach, the lease can be cancelled. Hence, there is no infirmity in the order passed by the first respondent.

6. Learned counsel appearing for the petitioner would vehemently contend that the first respondent, simply accepting the recommendation of the second respondent, without considering the objection raised by the petitioner and without assigning any reason whatsoever cancelled the lease. He would further contend that the impugned order passed without considering objections raised by the petitioner which amounts to non application on the part of the first respondent. He would further contend that the first respondent ought to have given valid reasons for cancelling the lease and he cannot simply cancel the lease without assigning any reason whatsoever. He would further contend that the first respondent has failed to consider that for the very same reasons a penalty was imposed by the third respondent which is now pending in appeal before the second respondent. In the above circumstances, learned counsel contend that without waiting for the result of the appeal filed by the petitioner, the first respondent hurriedly passed the impugned order cancelling the lease on the very same reasons. In support of his submissions, learned counsel for the petitioner relied upon the following decisions:

<https://hcservices.ecourts.gov.in/hcservices/>

(1) In Shri Sitaram Sugar Company Ltd., & another
Vs. Union of India and others reported in 1990 (3) SCC 223



(ii) In Sant Lal Gupta and others Vs. Modern Co-op Group of Housing Society Ltd., reported in 2010 (13) SCC 336

(iii) In Oryx Fisheries Pvt Ltd., Vs. Union of India and others reported in 2010 (13) SCC 427

(iv) In Nisha Devi Vs. State of Himachal Pradesh & others reported in 2014 (16) SCC 392 and

(v) in V.S.O. Balakrishnan and another Vs. District Collector, Thiruvallur reported in 2009 (2) MLJ 577"

7. Per contra, learned Additional Advocate General would contend that the petitioner was given adequate opportunity to raise his objections, and after considering the same, the first respondent has passed the impugned order cancelling the lease. Apart from that the petitioner himself appeared before the third respondent and given a letter admitting his guilt and also praying for lesser penalty now, he cannot turn around to deny all the allegations. He would further contend that the order passed by the third respondent being one of the administrative orders, in the absence of any statutory rule requiring the first respondent to record reasons, there is no necessity to give reason, the first respondent after considering the recommendation made by the second and third respondents passed the impugned order which is perfectly valid and therefore, there is no illegality or infirmity in the order passed by the first respondent. In support of his submission, learned Additional Advocate General appearing for the respondents relied on a decision of the Supreme Court reported in (1991) 3 SCC 38 (Union of India Vs. E.G. Nambudiri).

8. I have considered the submissions made on either side and perused the materials available on record and also given my anxious consideration to the issues involved in this case.

9. The first and foremost submission of the learned counsel appearing for the petitioner is that when an enquiry was conducted by the first respondent, the petitioner appeared and given a detailed objection disputing the allegations made against him. When such an objection is raised before the first respondent, the first respondent ought to have considered the same and given valid reason for rejecting his objections. But the first respondent without considering the objections raised by the petitioner, simply cancelled the lease by accepting the recommendation of the second respondent. I find much force in the arguments advanced by the learned counsel appearing for the petitioner. When the first respondent being the original authority is expected to consider the objections filed by the petitioner and record his reasons in support of his conclusion, failure to give any reason only show the non application of the



mind on the part of the authority while passing the order and the first respondent mechanically accepted the recommendation of the second respondent and cancelled the lease by way of a cryptic and non speaking order.

10. In Sant Lal Gupta's case (supra), the Hon'ble Supreme Court has held as follows:

"....The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

11. Similarly, in Kranti Associates (P) Ltd., Vs. Masood Ahamed Khan reported in (2010) 9 SCC 496 has held as follows:

"In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts.



This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

12. So far as the judgment relied upon by the learned Additional Advocate General appearing for the respondents is concerned, even in the above case, the Supreme Court has held that the representation given by the respondent can be rejected by the Government in the absence of statutory provision requiring communication of reasons. However, the Supreme Court further held that even though the order does not contain any valid reason but the authority should place reason for such rejection before the Court. But in the case on hand, there is no material was placed to substantiate his conclusion before this Court to show that the first respondent has applied his mind before passing the impugned order. Therefore, the decision relied upon by the learned Additional Advocate General is not applicable to the facts of the present case.

13. Even though various other grounds have been raised by the learned counsel appearing for the petitioner, since the impugned order has been passed without giving any reason and without considering the objection raised by the petitioner, this Court is of the opinion, the impugned order is liable to be set aside and the matter may be remanded back to the first respondent for passing reasoned order by giving another opportunity of hearing to the petitioner on merits and in accordance with law.



14. In the result, the writ petition is allowed and the impugned order passed by the first respondent dated 11.04.2016 cancelling the lease granted to the petitioner is set aside. The matter is remitted to the first respondent and the first respondent is directed to consider matter afresh, on merits and in accordance with law, after giving an opportunity to the petitioner and pass a reasoned order within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P (MD) Nos.8070 and 8071 of 2016 are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Industries Department,

Fort St., George,
Chennai 600 009.

2. The Commissioner of Geology and Mining,
Guindy, Chennai 600 032.

3. The District Collector,
Dindigul District, Dindigul.

+1cc to Mr.K.Rama Krishna Reddy, Advocate in SR No.78504

+1cc to the Spl.Govt.Pleader in SR No.79072

Order made in
Writ Petition (MD) No.10322 of 2016
and
W.M.P (MD) Nos.8070 and 8071 of 2016
02.12.2016

SMS

ANR/CK/09.12.2016/8P/6C