



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.06.2016
CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD). No.1625 of 2016
and
W.M.P. (MD).No.2358 of 2016
and
W.M.P. (MD).No.1397 of 2016

Punitha Michael Kal Udaipor Sangam,
rep. By its President,
G.Alexander.

... Petitioner

Vs.

1. The Commissioner of Geology and Mining,
O/o.the Commissioner of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032.

2. The District Collector,
O/o.The District Collector,
Kanyakumari District,
Kanyakumari.

... Respondent

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Tender Notification in Na.Ka.No.03/Pu.Ma.Su/2016 dated 08.01.2016 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction directing the Respondent No.1 to dispose of the appeal petition preferred by the petitioner dated 21.01.2016 within the time period stipulated by this Honourable Court.

For Petitioner	:Mr.T.Lajapathi Roy
For Respondents	:Mr.C.Selvaraj Special Govt. Pleader

O R D E R

Heard both sides.

2. According to the petitioner/Society, it was formed for the purpose of providing services to the labourers engaged in stone quarrying works and for their social upliftment. It was registered under the Tamil Nadu



Societies Registration Act from the year 2016.

3. The stand of the petitioner is that the second respondent had called for the tender for stone quarrying in the Government poromboke lands in Kanyakumari District on 22.11.2015 in accordance with Section 8(10-A(a)) of the Tamil Nadu Minor Mineral Concession Rules, 1959. It preferred an application, since their society was entitled to apply in respect of the said tender by virtue of Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959, r/w Rule 8(10-A(a)). However, the application of the petitioner was rejected by the second respondent on 06.01.2016 mentioning several reasons.

4. The Learned Counsel for the Petitioner submits that in the rejection order passed by the second respondent on 06.01.2016, it was specifically made mention of that the petitioner shall prefer an appeal before the first respondent/Commissioner of Geology and Mining, Chennai within 30 days, as per Rule 36-C of the Tamil Nadu Minor Mineral Concession Rules, 1959. Accordingly, the petitioner projected an appeal before the first respondent on 21.01.2016 narrating the facts in the subject matter in issue. Admittedly, the said appeal is pending for consideration before the first respondent. In this regard, the Learned Counsel for the Petitioner proceeds to project an argument that when the appeal preferred by the petitioner is pending consideration before the first respondent, to the shock and dismay of the petitioner, instead of awaiting for the result of the appeal petition preferred by the petitioner, the second respondent had issued the impugned tender notification dated 08.01.2016 in utter violation of the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959.

5. The primordial submission advanced on behalf of the petitioner is that the second respondent, without providing a breathing time to prefer an appeal against the rejection order before the first respondent, had issued the impugned tender notification on 08.01.2016 hastily and therefore, the impugned advertisement is an arbitrary and illegal one, besides the same is against the well-settled principles of Law.

6. Per contra, the Learned Counsel for the respondents contends that the self-help group represented by the petitioner is not a registered co-operative society and as per Rule 8(10-A(a)) of the Tamil Nadu Minor Mineral Concession Rules, 1959, only the registered co-operative societies are eligible to participate in the proposed system of direct grant of leases of stone quarries to SGSY groups and societies formed by released bonded labourers. Furthermore, the self-help group is basically eligible to apply for a lease and therefore, the writ petitioner is not going to be benefitted by disposal of his appeal petition. Per contra, it will result huge loss to the Government.



7. Added further, the notification in question was published in the District Gazette with reference to Rule 8(9) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and there is no necessity to resort to publication of notification in the newspapers and in fact, the notification was published in the notice-board of the Revenue Divisional Officers, Taluk Officers and other related Government Officers in Kanyakumari District.

8. The Learned Counsel for the respondents brings it to the notice of this Court that the second respondent, at first, published notification in District Gazette dated 23.11.2015 under Tender-cum-Auction System, invited applications from Swarna Jayanthi Gram Swarozgar Yogana Scheme Groups (SGSY groups), registered either under the Tamil Nadu Co-operative Societies Act, 1983 or under the Tamil Nadu Societies Registration Act, 1975 and the societies formed by released bonded labourers, as per Rule 8 (10-A) (a) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Two applications were received from two self-help groups and not from any registered co-operative societies and hence, the two applications were rejected.

9. By means of reply, the Learned Counsel for the Petitioner contends that the petitioner/Society is a registered one under the Tamil Nadu Societies Registration Act and as such, it is entitled to avail the benefits as per Rule 8(10-A) (a) of the Tamil Nadu Minor Mineral Concession Rules, 1959. At this juncture, the Learned Counsel for the Petitioner invites the attention of this Court to the interim order dated 27.01.2016 passed in W.MP.(MD).Nos.1397 and 1399 of 2016 in W.P.(MD).Nos.1625 and 1626 of 2016, wherein, this Court had granted an order of interim stay as prayed for by the petitioners.

10. A mere running of the eye over the contents of the appeal petition dated 21.01.2016 filed by the writ petitioner before the first respondent latently and patently indicates that the petitioner has challenged the order of the second respondent/District Collector, dated 06.01.2016, raising contentions to the effect that the petitioner society was duly registered under the Tamil Nadu Societies Registration Act, 1975 and there are by-laws to the society and it has an office at Agastheeswaram and therefore, it had applied for stone quarrying at Agastheeswaram, as per Rule 8(10-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 etc., Apart from that, it is evident that the petitioner has sought for a personal hearing besides requesting the first respondent to conduct an enquiry and ultimately prayed for setting aside the order of the District Collector, dated 06.01.2016.

At this juncture, it is to be borne in mind that ordinarily, a litigant, when he has opted to prosecute a particular matter before a certain forum and when the issues



involved are pending before the said forum for final adjudication, then, availing a parallel remedy on the same subject before a Court of Law, is impermissible, as opined by this Court.

12. A cursory glance of the writ petition papers unerringly points out that the petitioner has filed the present Writ Petition (MD).No.1625 of 2016 on 25.01.2016 within 5 days from the date of filing of the petition. In this connection, it is not out of place for this Court to make a pertinent mention that the petitioner/society, as against the order dated 06.01.2016 passed by the second respondent/District Collector, Kanyakumari District, has an effective, viable and efficacious remedy of preferring an appeal and accordingly, it exercised its right prescribed under the Tamil Nadu Minor Mineral Concession Rules, 1959. The pendency of the appeal preferred by the petitioner/society in terms of Rule 36-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 is not disputed, when the petitioner has an alternative, viable, effective and efficacious remedy of preferring an appeal under Rule 36-C of Tamil Nadu Minor Mineral Concession Rules, 1959 and also preferred the appeal as against the order dated 06.01.2016 of the second respondent and when the said appeal is pending consideration on the file of the first respondent, this Court, at this stage, without expressing any opinion on the merits and contents of the appeal so preferred by the petitioner and also not delving deep into the merits of the subject matter in issue to prevent an aberration of Justice and in furtherance of substantial cause of Justice, directs the first respondent/The Commissioner of Geology and Mining, Chennai to immediately take up the said appeal for hearing and to dispose of the said appeal on merits by passing a necessary, speaking order (outlining the process of reasoning in a qualitative and quantitative fashion), of-course, after providing enough/adequate opportunity to the petitioner and others concerned, within a period of 4 weeks from the date of receipt of a copy of this order. It is open to the petitioner to raise all factual and legal pleas before the first respondent/The Commissioner of Geology and Mining, Chennai, at the time of passing orders in the pending appeal, who is required to advert to each and every plea raised on behalf of the petitioner and to arrive at a finding in the manner known to Law and in accordance with Law. It is open to the petitioner/society to provide necessary records/copies of documents, which it rely in connection with the 'Appeal' and on production of the same, the First respondent shall take into account of the same and to pass orders in the appeal, within the time stipulated by this Court.

13. Before parting with the case, it is open to the petitioner to move/file necessary application seeking necessary ~~interim orders and relief~~ and seek redressal of his grievance in the manner known to Law.



WEB COPY

14. With the aforesaid observations and directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS)

To

1. The Commissioner of Geology and Mining,
O/o.the Commissioner of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032.

2. The District Collector,
O/o.The District Collector,
Kanyakumari District,
Kanyakumari.

+1cc to Mr.T.Lajapathi Roy, Advocate, Sr.No.32348

+1cc to the Special Government Pleader, Sr.No.32453

VS

JM/AAL-MPA/SAR-II/27.06.2016/5P-5C

Writ Petition (MD).No.1625 of 2016
22.06.2016