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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2016

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No.2579 of 2016

and

W.M.P (MD) No.2290 of 2016

M/s.Lizthom Infrastructure Pvt., Ltd.,
Rep by its Proprietor,
A.Babu Thomas,
Vazhakuzhi, Mukkambala Post,
Kalkulam Taluk,
Kanyakumari District.

... Petitioner

Vs.

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

2.The District Collector,
Nagercoil, Kanyakumari District.

3.The Superintendent of Police,
Nagercoil, Kanyakumari District.

4.The Assistant Director of Geology and Mining,
Collectorate, Nagercoil, Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the 3rd respondent from interfering with the business of the Petitioner in transporting rough stone jelly either by himself or through his customers to the State of Kerala from petitioners quarry in S.F.No.236/1A2 over an extent of 1.94.0 Hectares in Surculacode Village at Kalkulam Taluk in Kanyakumari District.

For Petitioner

: Mr.K.Samidurai

For Respondents

: Mr.K.P.Krishnadoss

Government Advocate

ORDER

The petitioner has come up with the above writ petition seeking for the issue of a writ of mandamus to forbear the third respondent from interfering with the business of the petitioner in transporting rough stone jelly either by himself or through his



customers to the State of Kerala from the petitioner's quarry in S.F.No.236/1A2 over an extent of 1.94.0 Hectares in Surculacode Village at Kalkulam Taluk in Kanyakumari District.

2. According to the petitioner, the second respondent namely, the District Collector, Nagercoil had issued licence by his proceedings dated 08.11.2011 for quarrying rough stone/jelly for a period of five years as per Rules 19 and 20 of the Tamil Nadu Minor Mineral Concession Rules, 1959. It is further submitted that he has got necessary permissions from the respective departments namely, from the Pollution Control Board and environmental clearance from the State Level Environment Impact Assessment Authority, Tamil Nadu. The second respondent had also issued certificate of registration for transportation and storage of minerals under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules 2011.

3. The difficulty experienced by the petitioner is that when he tried to transport quarried stones to Kerala, the police authorities in the check post did not allow them to transport the same. Despite the proceedings of the District Collector permitting them to carry on business, the third respondent is not permitting to carry out the said business. Hence, the petitioner has come up with the above writ petition.

4. Pursuant to the notice issued by this Court, the third respondent has filed a counter affidavit refuting the allegations made in the affidavit filed in support of this writ petition. Paragraphs 7 to 9 of the counter affidavit are extracted hereunder:-

"7. I respectfully submit in this connection that there are chances to transport river sand under the guise of M-sand crusher materials, hollow blocks etc., Recent past it was noticed during the check of vehicles that river sand has been illegally filled in 2/3 portion of vehicles and covering the top 1/3 portion with M-sand/jelly/hollow block. Recently such type of smuggling of river sand covered by hollow block in a lorry bearing No. TN 75 E 3555 was detected and a case in Arumanai P.S. Cr. No. 97/2015 under Sections 294(b), 353, 307, 379 IPC read with 21(i) Mines and Mineral Development and Regulation Act, 1957 Section 36(A) MM Concession Rules 1959 was registered on 01.03.2015 and accused was arrested and the lorry was seized.

8. I respectfully submit that if the transportation of M-sand is allowed without checking, responsibility rests over Police Department to check the vehicles as to whether they are transporting river sand illegally under the guise of M-sand etc., There is a chance of transporting more than 500 vehicles loaded with the above permitted items towards Kerala State. To find out the illegal transportation of river sand, each and every vehicles loaded with crusher products and M-sand has to be checked.

9. I respectfully further submit that the Police Department in Kanyakumari District is every day facing heavy



traffic problems in the N.H.47 as well as in the highways for the reason that the vehicles used for transporting M-sand and other materials with heavy load are occupying the major portion of the way and thereby causing the vehicles following the same to slow down and in the result heavy traffic problems are being created and in such a situation it takes time for checking".

5.Further, it is stated in the counter affidavit that only if the vehicles with the materials which are found not possessing required documents and if it is found to be smuggling of river sand, the action has been taken by the police officials at the check post.

6.It is relevant to note that in similar circumstances, this Court had an occasion to decide the same issue and has granted similar request in W.P.No.27839 of 2015 by an order dated 13.10.2015 wherein it has been held as follows:-

"13.It is always open to the petitioner to approach this Court as and when any illegality is committed by the respondents. Similarly, if any illegality is committed by the petitioner, it is always open to the respondents to take appropriate action in the manner known to law".

7.Similarly, in W.P(MD)No.22032 of 2015, this Court by an order dated 17.12.2015, granted the same relief wherein it has been held as follows:-

"6.In these circumstances, the writ petition is disposed of recording the statement of the learned Additional Advocate General that the petitioner will be permitted to transport the materials as per the transit permit issued to him and if the petitioner transports the materials other than the materials that are mentioned in the transit permit, the authorities are at liberty to intercept the same and to proceed in accordance with law".

8.As stated earlier, the petitioner is possessing valid licence for running the said business for a particular period and therefore, there is no impediment for the petitioner to transport the quarry stone or m-sand to Kerala. It is open to the third respondent to intercept and intervene, whenever the petitioner is transporting any other materials other than what has been permitted and take appropriate action against them.

9.The writ petition is accordingly disposed of. No costs. Consequently, W.M.P.(MD)No.2289 of 2016 is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1.The Secretary to Government,
Industries Department,
State of Tamil Nadu,
Fort St., George,
Chennai 600 009.

2.The District Collector,
Nagercoil, Kanyakumari District.

3.The Superintendent of Police,
Nagercoil, Kanyakumari District.

4.The Assistant Director of Geology and Mining,
Collectorate, Nagercoil, Kanyakumari District.

+1cc to Mr.K.Samidurai, Advocate Sr.No.8883

+1cc to The Special Government Pleader SR.No.9131

akm/17.02.2016/4p-7c/NGM/SS/SAR-I

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