



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.03.2017

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P (MD) No.4898 of 2014

WEB COPY

R.Prabhakaran

.. Petitioner

Vs.

The Secretary,
State Level Environment Impact Assessment Authority,
Tamil Nadu, 3rd Floor, Panagal Maligai,
No.1, Jennis Road, Saidapet,
Chennai-15.

.... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent office in Letter No.SEIAA-TN/F-731/2013 dated 14.03.2013 and quash the same and for directing the respondent to refund Rs.1 Lakh to the petitioner.

For Petitioner : Mr.K.Govindarajan
For Respondent : Mr.G.R.Swaminathan
Senior Counsel

ORDER

This writ petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent office in Letter No.SEIAA-TN/F-731/2013 dated 14.03.2013 and quash the same and for directing the respondent to refund Rs.1 Lakh to the petitioner.

2. The petitioner would aver among other things that he is in possession of lease hold land with an extent of 1.75.0 hectare in S.F.No.118/1A and 118/54, Elavanur Village, Aravankurichi Taluk, Karur District and afore-said lease was taken for the purpose of starting a major mineral quarry, namely, quartz and Feldspar. For the purpose of starting the quarry, the respondent insisted the petitioner to get prior environmental clearance certificate which is a mandatory. On the basis of the afore-said instruction, the application was presented on 21.01.2013 along with a demand draft for Rupees One Lakh with D.D.Nos.798850 dated 19.01.2013 for Rs.40,000/-, D.D.No.798849 dated 19.01.2013 for Rs.40,000/- and D.D.No.798851 dated 19.01.2013 for Rs.20,000/-. The petitioner submits that the application as well as demand draft was acknowledged by the respondent office dated 21.01.2013.



3. The petitioner was under the impression that prior environment clearance in respect of the project is a mandatory and only on that basis, the application was presented with a fee of Rs.1 Lakh. But, to the shock and surprise of the petitioner, through a letter dated 04.02.2013 was received from the respondent office stating that as per the Circular of the Ministry of Environment & Forests, Government of India proceedings in O.M.No.J-11013/182/2012-IA-II (M) dated 04.01.2013 there is no need for prior environment clearance for mining projects of major minerals of lease area of less than five hectares. They also clarified that only the State Pollution Control Board clearance is necessary for the afore-said project.

4. Immediately, on receipt of the said application, the petitioner sent a communication on 16.12.2013 to the respondent office requesting him to refund of Rs.one Lakh collected from the petitioner. Since the application was not processed and there is no approval order or rejection order in respect of the said application and the respondent has sent a communication dated 04.02.2013 stating that environment clearance is not necessary for the lands which is measuring less than five hectares and when the petitioner asked for refund of the amount, it is replied that since his application was processed and a reply had been sent stating that the environmental clearance is necessary only for lease area for less than five hectares, the petitioner is not entitled to return of the processing fee. Hence, he came forward with this writ petition.

5. The matter has been pending for adjudication since 2014 onwards and no counter affidavit, has been filed by the respondent and therefore, this Court proceeded with the matter on the basis of the materials available before it.

6. The learned counsel for the petitioner submits that but for the reply given by the respondent, they cannot hold the amount paid by the petitioner for the purpose of getting environmental clearance certificate and hence, he prayed for appropriate orders.

7. The learned counsel for the respondent, on instruction, would submit that since there was reply given by the respondent, the petitioner is not entitled to get refund of the amount paid by him.

8. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

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9. In my considered view, except the reply sent by the respondent referring to a government letter stating that below



five hectares, there is no need for environmental clearance certificate, nothing has been done by the respondent. When such is the matter, there is no question of retaining the amount paid by the petitioner for the purpose of getting environmental clearance certificate and as a result, the respondent has no other option but to refund the amount paid by the petitioner. Above all, it is to be pointed out here that there are four stages involved in the process of getting environmental clearance certificate, which are screening, scoping, public consultation and appraisal. None of the stages have been done by the respondent in the case on hand except to state no environmental clearance certificate is necessary, if the area is less than five hectares.

10. In the light of the afore-said factual position, the respondent is directed to refund the amount paid by the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

11. With the above direction, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Secretary,
State Level Environment Impact Assessment Authority,
Tamil Nadu, 3rd Floor, Panagal Maligai,
No.1, Jennis Road, Saidapet,
Chennai-15.

+1cc to M/S.K.Govindarajan Advocate SR.No.17537
+1cc to M/S.G.R.Swaminathan Advocate SR.No.18017

W.P (MD) No.4898 of 2014
23.03.2017

JM/MR/SAR 2/17.04.2017/3P/4C