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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :13.03.2017

ORDER PRONOUNCED ON:28.04.2017

CORAM

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

W.P (MD) No.4078 of 2017

Shanmugam

.. Petitioner

**Vs.**

1.The District Collector,  
Tirunelveli, Tirunelveli District.

2.The Assistant Director of Geology and Mines,  
Tirunelveli,  
Tirunelveli District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to issue transit pass enabling the petitioner to do the quarrying business as per the agreement dated 20.04.2012 executed by the petitioner and the second respondent.

For Petitioner : Mr.R.J.Karthick  
For Respondents : Mr.G.Muthukannan  
Government Advocate

**ORDER**

By consent, this writ petition is taken up for final disposal.

2. This writ petition has been filed praying for the issuance of a Writ of Mandamus directing the respondents to issue transit pass enabling the petitioner to do the quarrying business as per the agreement dated 20.04.2012 executed by the petitioner and the second respondent.

3. The case of the petitioner is that the petitioner is quarrying business in the survey numbers referred to in the writ petition in Vadikottai Village, Sankarankovil Taluk, Tirunelveli



District for a period of five years. Thereafter, agreement for quarry and carrying away mineral from the afore-said land was executed on 20.04.2012. The period of lease covered under the said agreement is valid for five years i.e. from 20.04.2012 to 19.04.2017.

3.1. The petitioner further submits that after the execution of agreement, the respondents were issuing the transit pass regularly. The last transit pass issued by the second respondent was dated 04.01.2017. Thereafter, transit pass was not issued to the petitioner. The petitioner further submits that without the transit pass, he could not transit mineral and do the quarrying activity. The period of quarrying lease expires on 19.04.2017. The respondents bound to issue the transit pass as per the agreement or the period of lease has to be extended for the non-utilized period. The petitioner also submits that he paid the seigniorage amount and respondent has also acknowledged the same on 18.01.2017.

3.2. Stating all these facts, on 23.02.2017, the petitioner gave a representation to the respondents to issue transit pass enabling the petitioner to do the quarrying business as per the agreement dated 20.04.2012. But, the respondents are dodging in issuing the transit pass. Even on receipt of the representation dated 23.02.2017, no action has been taken by the respondents. Hence, the petitioner is before this Court with the afore-stated relief.

4. The first respondent has filed a detailed counter affidavit, which is as follows:-

4.1. The petitioner has preferred an application dated 29.04.2011 for grant of quarry lease for quarrying roughstone/jelly & gravel in the survey nos referred to in the writ petition for a period of five years at Sankarankoil Taluk, Tirunelveli District for period of 5 years vide proceeding of the first respondent in Rc.No.M1/27828/2011, dated: 10.04.2012. The lease deed was executed on 20.04.2012 and the lease period is valid upto 19.04.2017. After executing the lease agreement quarrying operations were carried out by the petitioner and transport permits were issued to the petitioner whenever he applied for the same. The petitioner was lastly issued with 150 despatch slips with a validity upto dated 08.01.2017.

4.2. In the meantime, the Hon'ble Supreme Court of India in **Deepak Kumar Vs State of Haryana and others** in I.A.No.12-13 of 2011 in SLP(C) No. 19628-19629 of 2009, dated 27.02.2012 ordered that prior environmental clearance shall be obtained before grant or renewal of lease for minor minerals irrespective of size of the area. Following that, the Ministry of Environment and Forests, Government of India in their Office Memorandum No.L-11011/47/2011-IA-11(M) dated 18.5.2012 issued instructions and the same is extracted below:-



" In order to ensure compliance of the above referred order of the Honorable Supreme Court dated: 27.02.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area upto 50 hectares including projects of minor minerals with lease area less than 5 hectares would be treated as category 'B' as defined in the Environment Impact Assessment Notification, 2006 and will be considered by the respective State Level Environment Impact Assessment Authority notified by Ministry of Environment and Forest and following the procedure prescribed under Environment Impact Assessment Notification, 2006".

4.3. Following the orders passed by the Hon'ble Supreme Court and the directions issued by the Ministry of Environment and Forests, the Commissioner of Geology and Mining, Chennai in letter No.3868/LC/2012, dated: 19.11.2012 issued instructions/guide lines for obtaining environmental clearance for grant of fresh or renewal of quarry leases in respect of minor minerals irrespective of size of the area.

4.4. It is further submitted that the State Government introduced Rules 41 and 42 in the Tamil Nadu Minor Mineral Concession Rules, 1959 by making an amendment in the said rules vide G.O.Ms.No.179, Industries (MMC1) Department, dated: 06.04.2015. Rule 41 stipulates that mining plan is a pre-requisite to the grant of lease and submission and approval of mining plan for minor minerals other than granite. Rule 42 stipulates for submission of environment clearance for the grant of quarry lease for minor minerals including granite.

4.5. As per sub Rule (iii) of rule 42 of the Tamil Nadu Minor Mineral Concession Rules, 1959 where quarrying operations for minor minerals including granite have been undertaken before the commencement of these rules without environment clearance, such holder of minor mineral including granite leases shall submit the environment clearance within one hundred and eighty days from the date of commencement of the rules.

4.6. It is further submitted that since the time limit granted for production of environmental clearance in respect of the existing quarry leases for minor minerals was not sufficient and based on the recommendations of the Commissioner of Geology and Mining, the Government in G.O.Ms.No.256 Industries (MMC1) Department, dated: 29.10.2015 issued orders by making further amendment to the Rules 41 and 42. By this amendment, the time limit for production of approved mining plan was extended to 180



days. Further, the time limit for production of environmental clearance in respect of the existing quarry lease for minor minerals was extended to 270 days.

4.7. It is further submitted that based on the request received from the Tamil Nadu Granite quarry Owners and Exporters Association and based on the recommendations of the District Collector, Villupuram and the Commissioner of Geology and Mining, the Government made further amendment to the Rule 42 by extending the time limit to 390 days for obtaining environment clearance for existing quarry leases for minor minerals vide G.O.Ms.No.12 Industries (MMC1) Department, dated 27.01.2016. The same was notified in the Tamil Nadu Government Gazette Extra- ordinary issue No.1 7, dated:27.01.2016.

4.8. It is further submitted that following the requests received from various quarters and based on the recommendations of the Commissioner of Geology and Mining, the time limit for obtaining environmental clearance was extended to 450 days by making further amendment to Rule 42 of Tamil Nadu Minor Mineral Concession Rules, 1959 vide G.O.Ms.No.72 Industries (MMC1) Department, dated 13.05.2016. The time limit granted for production of environment clearance in respect of the existing quarry leases for minor minerals was expired on 14.07.2016.

4.9. It is further submitted that in the meantime, the Ministry of Mines, Government of India in their Notification S.O 423(E), dated: 10.02.2015, declared the 31 major minerals such as Agate, Ball Clay, Barytes, Calcite, Dolomite, Dunite, Quartz, Felspar, Fireclay, Gypsum, Laterite, Mica, Silica sand and others as minor minerals. Following that, necessary amendment was made in the Tamil Nadu Minor Mineral Concession Rules, 1959 for the purpose of grant of quarry lease for the said minor minerals. All the 392 existing quarry lease for the above said minor minerals were required environmental clearance. Further, out of the 856 existing quarry leases for rough stone, 587 quarry leases were under operation for which 487 cases were pending for environmental clearance from the State Environment Impact Assessment Authority. Further, out of the 745 existing quarry leases for granite without environmental clearance, 169 quarries were under operation for which 132 cases were pending for environmental clearance from the State Environment Impact Assessment Authority.

4.10. Since the time limit of 450 days granted under Rule 42 for submission of environmental clearance pertaining to the existing lease hold areas for all minor mineral came to an end on 14.07.2016 and it was felt by the Government that reasonable time to be provided to the existing lease holder for production of environmental clearance. After careful



examination, Government decided to extend the time limit prescribed under Rule 42 vide G.O.(Ms) No.72 Industries Department, dated 13.05.2016 for an additional period of 6 months by way of an amendment to the Rule 42.

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4.11. Accordingly, Rule 42 was amended vide G.O.(Ms) No.105 Industries Department, dated 14.07.2016 and the time limit was extended to 630 days for production of environment clearance in respect of the existing quarry leases for all minor minerals. The same was notified in the Tamil Nadu Government Gazette Extra-ordinary issue No.167, dated 14.07.2016. Thus, the time limit granted for production of environmental clearance in respect of all the existing quarry leases for minor minerals expired on 10.01.2017. After that, no extension of time limit has been granted for the production of environmental clearance in respect of all the existing quarry leases for minor minerals.

4.12. It is further submitted that as per sub rule (iv) of rule 42 of Tamil Nadu Minor Mineral Concession Rules, 1959, when the existing holder of minor mineral leases including granite failed, to submit the environmental clearance within the stipulated period, the District Collector or the Government, as the case may be shall cancel the lease after giving an opportunity of personal hearing.

4.13. In this connection, it is submitted that the Principal Bench of the National Green Tribunal by order dated 04.05.2016 in Original Application No.34 of 2016 in the matter of **Naresh Zargar Vs State of Madhya Pradesh and 4 others**, disposed of the application in relation to minor minerals with the following directions;

1. "We hereby quash and direct the State of Madhya Pradesh and all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and / or in derogation of the orders of the Tribunal.
2. All the district level authorities, DEIAA and DEAC, are directed to dispose of all the applications pending with them by 31<sup>st</sup> may, 2016 positively. We will not grant any extension of time for this purpose hereafter.
3. All the mines owners which of them have not submitted the application as on 31<sup>st</sup> march, 2016 to SEIAA, DEIAA and DEAC, shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever.

4. The applications which are deficient and where the applicants have not submitted all requisite documents,



such applicants are hereby granted last opportunity of 1 week (one week) to submit the documents. In the event they fail to submit such document and make applications complete and errorless in all respects than after the stated period of 1 week they shall also be liable to be shut down without any further notice. If they comply with this direction, they would also be entitled to the advantage up to 31<sup>st</sup> May 2016.

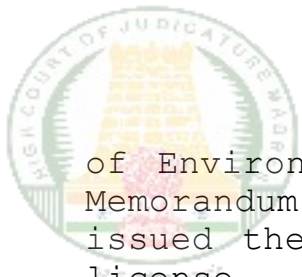
5. All the State Authorities are directed to upload on their respective websites, details of the applications pending before them as on 31<sup>st</sup> March, 2016. They will also separately classify the applications which deficient in any respect whatsoever."

5. It is further submitted that the Commissioner of Geology and Mining in letter No.6731/LC/2015, dated 11.01.2017 has instructed all the District Collectors and all the District Officers of the Department of Geology and Mining to ensure the compliance of the orders passed by the Hon'ble Supreme Court of India in **Deepak Kumar Vs State of Haryana** dated **27.02.2012**, orders of the National Green Tribunal, Principal Bench, New Delhi, dated 19.02.2016 in the matter of **Jatinder Singh Vs Union of India** in **O.A. No.495 of 2015** and orders of the National Green Tribunal, Principal Bench, New Delhi, dated 04.05.2016 in the matter of **Naresh Zargar Vs State of Madhya Pradesh and others** in O.A.No.34 of 2016 scrupulously in letter and spirit.

6. It is further submitted that in the instant case, the petitioner has failed to produce environmental clearance obtained from the State Environment Impact Assessment Authority in respect of his existing quarry lease granted for rough stone, jelly and gravel in the subject area within the permitted time limit of 630 days. i.e. on or before 10.01.2017 and the petitioner is not entitled to carry out quarrying operations in the subject quarry after 10.01.2017 and therefore, transport permits were not issued to the petitioner. To sum up, he prayed for the dismissal of this writ petition.

7. Considered the submissions made on either side and perused the materials available on record.

8. A perusal of the counter affidavit would indicate that in pursuant to the direction issued in the case of the **Deepak Kumar Vs State of Haryana and others** in I.A.No.12-13 of 2011 in SLP(C) No. 19628-19629 of 2009, dated 27.02.2012 the respondents insisted that prior environmental clearance should be obtained before grant or renewal of lease for minor minerals irrespective of size of the area. Following the same, the Ministry



of Environment and Forests, Government of India in their Office Memorandum No.L-11011/47/2011-IA-11(M) dated 18.5.2012 have also issued the instructions to be followed in the case of quarrying license. Subsequently, the Ministry of Environment and Forests, the Commissioner of Geology and Mining, Chennai in letter No.3868/LC/2012, dated 19.11.2012 have also issued instructions/guide lines. Initially, the government has granted 180 days for getting environment clearance for the existing lease holders. After series of representations from the quarry operators, it was extended upto 630 days and it expired on 10.01.2017. Despite of seriousness of matter and sufficient time was granted to the petitioner, he did not choose to get environmental clearance from the authorities concerned. Apart from all these things, the National Green Tribunal have also issued series of directions in its strictest terms in the matter of giving quarry license to the quarry operators.

8.1. From the counter, it is also seen that the Commissioner of Geology and Mining in letter No.6731/LC/2015, dated 11.01.2017 has instructed all the District Collectors and all the District Officers of the Department of Geology and Mining to ensure the compliance of the orders passed by the Hon'ble Supreme Court of India in **Deepak Kumar Vs State of Haryana** dated **27.02.2012**, orders of the National Green Tribunal, Principal Bench, New Delhi, dated 19.02.2016 in the matter of **Jatinder Singh Vs Union of India** in **O.A. No.495 of 2015** and orders of the National Green Tribunal, Principal Bench, New Delhi, dated 04.05.2016 in the matter of **Naresh Zargar Vs State of Madhya Pradesh and others** in O.A.No.34 of 2016 scrupulously in letter and spirit.

8.2. Since the petitioner has not obtained permission even after granting 630 days, the respondents have rightly rejected the claim of the petitioner. Further, this Court is of the considered view that the subject matter is not only the policy of the government but also such direction came to be issued pursuant to the direction of the Hon'ble Supreme Court as well as National Green Tribunal, which is the expert in matters relating to environmental issues. In such type of matters, this Court cannot stretch its hands further and rewrite the settled issue.

8.3. Above all these things, Rule 42 was amended vide G.O.(Ms)No.105 Industries Department, dated 14.07.2016 and the time limit was extended to 630 days for production of environment clearance in respect of the existing quarry leases for all minor minerals. The same was also notified in the Tamil Nadu Government Gazette Extra-ordinary issue No.167, dated 14.07.2016. Despite the Gazette notice issued on 14.07.2016, the petitioner has not obtained environment



clearance which is essential for continuing his quarrying license.

For the foregoing reasons, this writ petition stands dismissed. No costs.

Sd/-  
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

**To**

1.The District Collector,  
Tirunelveli, Tirunelveli District.

2.The Assistant Director of Geology and Mines,  
Tirunelveli, Tirunelveli District.

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 55257

SSM

TE/MMS : 09/05/2017 : 8P/4C

Pre-delivery order made in  
W.P(MD)No.4078 of 2017  
28.04.2017