



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.11617 of 2018

and

W.M.P.(MD) No.10585 of 2018

Mullah Earth Movers
Transporters & Contractors
rep.by its Proprietrix Shajahan
Thalliyil House
Ramakkal Mettu
Idukki, Kerala State

... Petitioner

vs.

1.The Secretary to Government
Geology & Mining Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009

2.The District Collector
Theni District

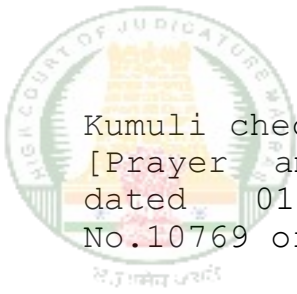
3.The Assistant Director
Geology & Mining
Theni

4.The District Revenue Officer
Theni District

5.The Revenue Divisional Officer
Uthamapalayam
[R5 is impleaded vide Court order
dated 01.06.2018 in W.M.P.(MD)
No.10768 of 2018]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to impugned order passed by the 5th respondent in his M.Mu.No.A4/1848/2018 dated 27.04.2018 and quash the same and direct the respondent no to prevent the petitioner from carrying and transporting minerals mention in the transit pass from Tamil Nadu to Idukki District, Kerala through the Cumbum Mettu check posts and



Kumuli check post, without following the due process of law.
[Prayer amended vide Court order
dated 01.06.2018 in W.M.P.(MD)
No.10769 of 2018]

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For Petitioner : Mr.K.P.S.Palanivel Rajan

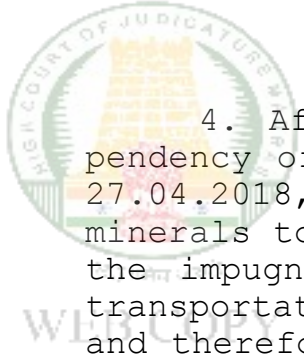
For Respondents : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.A.Muthu Karuppan
Additional Government Pleader

O R D E R

The petitioner was involved in the manufacture of hollow blocks and also involved in transportation of raw-materials, such as, M-Sand, Gravel, Crusher Dust and Jelly etc., from Theni District. The first respondent, who is involved in regulating such business, has framed "Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011 (hereinafter, referred to as "the Rules"). The object of the Rules is to prevent the illegal mining of minerals. According to the Rules, all minerals, except sand, require transit pass issued by the Deputy Director concerned for the lawful transportation of minerals by a carrier from the place of stockyard to the place, where it is intended to be sold. In order to lawfully transport the minerals, the carrier must have a valid transit pass.

2. According to the petitioner, he, being involved in the business of transporting the permitted minerals for the past few years, is transporting the consignment from the State of Tamil Nadu to the State of Kerala, with valid transit pass issued by the competent Authority. The lorries, which are transporting these minerals with valid transit pass, have to cross two check posts, namely, Cumbum Mettu Check Post and Kumuli Check Post. All these years, the petitioner had transported the minor minerals, without any hindrance, since he was having a valid pass and permit issued by the third respondent.

3. While so, according to the petitioner, from March 2018, the officials manning the aforesaid two check posts alone refused to allow his vehicles carrying minor minerals, despite the production of valid transit pass and permit issued by the third respondent. According to the petitioner, the refusal was on the basis of oral instruction from the second respondent not to allow the vehicles carrying minerals to the State of Kerala. As according to the petitioner, such an oral prohibitory order was unreasonable and unjust, he has approached this Court for issue of a writ of mandamus forbearing the respondents 2 and 4 from preventing the petitioner from transporting the minerals mentioned in the transit pass to the State of Kerala.



4. After notice was ordered in the writ petition and during pendency of the same, the fifth respondent has passed an order, on 27.04.2018, holding that the petitioner cannot transport minor minerals to the State of Kerala and also imposed fine. According to the impugned order, the transit pass and permit were issued for transportation of minor minerals only within the State of Tamil Nadu and therefore, the transportation of minor minerals to the State of Kerala was outside the scope of the permit issued to the petitioner. The petitioner was, therefore, constrained to amend the prayer in the writ petition for quashing the above said order and filed a miscellaneous petition in W.M.P.(MD) No.10769 of 2018. The said miscellaneous petition has been ordered by this Court on 01.06.2018.

5. The learned counsel appearing for the petitioner would vehemently contend that on behalf of the respondents 2 to 5, the officials, who were manning the above said check posts, had intercepted the lorries carrying permitted minerals and refused to allow the same into the State of Kerala, despite the fact that the petitioner was having a valid transit pass.

6. The learned counsel appearing for the petitioner would draw the attention of this Court to the transit pass issued by the competent Authority, dated 12.03.2018 and 09.04.2018 etc., which are enclosed in the typed set of papers filed in support of the writ petition. In spite of the production of transit pass, the Authority concerned behaved in a high-handed manner and illegally and unjustly prevented the petitioner's vehicles carrying minor minerals from entering into the State of Kerala. The learned counsel for the petitioner would, therefore, submit that the order passed by the fifth respondent, dated 27.04.2018, preventing the petitioner's vehicles carrying minor minerals from entering into the State of Kerala is contrary to law and permit issued by the third respondent and such a reasoning, as found in the impugned order, is false and incorrect. In the said circumstances, the learned counsel for the petitioner would submit that the action of the respondents in not permitting the petitioner to transport minor minerals into the State of Kerala is liable to be interfered with and the petitioner is entitled to the relief as prayed in this writ petition.

7. Mr.B.Pugalendhi, learned Additional Advocate General, appearing for the respondents would submit that though the petitioner was issued with transit pass, he did not comply with the requirements in terms of the above stated Rules, particularly, in Form - F, which was issued under Rule 6(1) of the Rules. However, the learned Additional Advocate General conceded that the petitioner was permitted to transport minor minerals into the State of Kerala. In fact, it is admitted in Paragraph No.4 of the counter affidavit that there was no ban for the interstate transportation of minerals, except river sand from the State of Tamil Nadu, and it was also averred in the counter affidavit that the respondents had not prevented the petitioner from transporting minor minerals into the State of Kerala, since he was having a valid transit pass with



filled-up columns. However, the only objection, which has been placed on behalf of the respondents before this Court for consideration, is that the Form - F, which is relied on by the petitioner himself, needs to be filled-up by the registree and countersigned by the driver of the vehicle, which is transporting the minerals. According to the learned Additional Advocate General, Form-F, namely, transit pass contains two distinct portions, of which, one has to be filled-up by the official concerned and the later portion has to be filled-up by the registree, namely, leaseholder or transporter. In the later portion of the Form, the details, which are required to be filled-up by the registree, are in regard to the date and time of despatch, name and address of the person who purchased the minerals from the registree, designation to which the minerals are being transported, approximate distance to the destination and route, expected time to reach the destination, mode of transport, registration number of the vehicle and name of the driver. Unless such details are fully filled-up, it cannot be held that the leaseholder or transporter was having a valid transit pass. Only when the columns are fully filled-up, the Authority of the check-posts would know the destination to which the minerals are transported, approximate distance to the destination and route, expected time to reach the destination, mode of transport, registration number of the vehicle and name of the driver etc. Such specific details need to be spelt out in various columns provided in the Form-F and such requirements are mandatory in order to prevent the misuse of permit and transit pass.

8. In this regard, the learned Additional Advocate General would draw the attention of this Court to the specimen copies of the transit pass filed by the petitioner himself. In one transit pass bearing Serial No.213, the essential details, such as, destination to which the minerals are being transported, approximate distance to the destination and route, expected time to reach the destination, mode of transport and the name of the driver, have been left blank. In the other transit pass bearing Serial No.152, the columns to be filled-up by the registree have been filled-up with wrong information and irrelevant to the details sought. Therefore, the Authorities manning the check posts, while verifying the Forms at the time of interception of the vehicles, were obviously not satisfied with the petitioner's transportation of minor minerals, since such transportation was not supported by any valid documents. In the said circumstances, the Authorities have rightly exercised their power and refused to allow the petitioner's lorries carrying minor minerals into the State of Kerala.

9. At this juncture, the learned counsel for the petitioner would submit that the respondents have improved the reasonings in the counter affidavit, which were not the basis of the impugned order passed by the fifth respondent on 27.04.2018. According to the settled legal principles, it is not open to the respondents to come up with new facts, which were not originally found in the impugned order. Therefore, he would submit that the reasons, as set



out in the counter affidavit, need to be brushed aside. He would further contend that the respondents themselves have admitted that there was no ban for transportation of minor minerals, except river sand, and the petitioner was not prevented from carrying minor minerals into the State of Kerala. In view of the admission of the respondents that there is no bar for transporting the minerals to the State of Kerala from the State of Tamil Nadu, the petitioner needs to be permitted to carry on transportation of minor minerals into the State of Kerala, since he is having a valid transit pass. Therefore, he would submit that the petitioner is entitled to the relief sought in this writ petition.

10. This Court has considered the rival submissions of the learned counsel for the petitioner as well as the learned Additional Advocate General for the respondents and perused the materials and pleadings placed on record.

11. Although a detailed rejoinder affidavit has been filed on behalf of the petitioner refuting the contentions of the respondents and the rejoinder also referred two orders of this Court in two different writ petitions, this Court is of the view that the decisions rendered in those two writ petitions referred in the rejoinder affidavit may not have any bearing on the order proposed to be passed herein.

12. Although the petitioner is having a valid transit pass issued by the competent Authority, as evidenced from the documents filed in support of the writ petition, nevertheless, as rightly contended by the learned Additional Advocate General, the crucial columns, which need to be filled-up on behalf of the petitioner, have not been filled-up properly, which rendered the transit pass not valid and unacceptable. Unless such essential details are mentioned in the Form-F (transit pass), the Authority concerned would not know as to whether the transportation of minor minerals is bona fide in terms of the permit granted and the transit pass is being used legally.

13. From the Rules and the materials as perused by this Court, what emerges in clear terms is that mentioning of certain details in the Form-F by the registree and countersigning by the driver of the vehicle, in which the minor minerals are transported, are mandatory and the same cannot be construed as optional. In the instant case, the two specimen copies of Form-F, which are made available for this Court to peruse, would clearly show that the petitioner has neither chosen to fill-up the important crucial details nor mentioned the correct details in the Form-F, which clearly made the transit pass invalid and unacceptable. As rightly contended by the learned Additional Advocate General, in view of the defective F-Forms, which accompanied the transporters while transporting the minerals, the Authorities have rightly intercepted the petitioner's lorries and refused to allow the minerals into the State of Kerala. This Court does not find anything wrong in the interception of the petitioner's



vehicles, when the basis of such legitimate transportation of minerals, namely, F-Forms were not properly filled-up and presented.

14. As regards the objection raised by the learned counsel appearing for the petitioner that it is not open to the Government to improve upon their objections in the form of counter affidavit than what is stated in the impugned order is concerned, it must be seen that sometimes the orders were passed in order to curb the illegal activities and such orders, by detailed reasonings, can be supplemented as done in the present case. This Court does not find that such reasonings, as contained in the counter affidavit, can be fatal to the impugned action taken against the petitioner. In any event, the substance of the objection raised by the respondents in the counter affidavit is acceptable and the objections stood vindicated, as evidenced, by the documents (F-Forms) relied on by the petitioner himself. When such being the position, this Court cannot shut its eyes to such a factual scenario presented before it and be guided only what is stated in the impugned order. Therefore, this Court is of the view that there is no infirmity in the action taken by the respondents against the petitioner on the basis of the reasons as set forth in the counter affidavit, which stood unequivocally established by the relevant materials made available before this Court.

15. For the above stated reasons, this Court does not find anything wrong in the action taken by the fifth respondent through the impugned order in M.Mu.No.A4/1848/2018, dated 27.04.2018, and hence, the writ petition is dismissed as being devoid of merits and substance. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

krk

To:

1.The Secretary to Government,
Geology & Mining Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The District Collector,
Theni District.

<https://hcservices.ecourts.gov.in/hcservices/>
3.The Assistant Director,
Geology & Mining,Theni.



4.The District Revenue Officer,
Theni District.

5.The Revenue Divisional Officer,
Uthamapalayam.

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+1cc to Mr.K.P.S.Palanivelrajan, Advocate in SR No.82696

+1cc to Spl Government Pleader, in SR No.82828

W.P. (MD) No.11617 of 2018

and

W.M.P. (MD) No.10585 of 2018

NM/SV/SAR III/25.11.18/7P/8C