



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.35 of 2011
against
WP(MD)No.616 of 2009
and
M.P(MD)No.1 of 2011

1. The District Collector,
Madurai District.

2. The Deputy Director,
Geology and Mining,
Department of Geology and Mining,
Collectorate Buildings, Madurai - 20.

3. The Revenue Divisional Officer,
Collectorate Premises,
Madurai - 20.

4. The Tahsildar,
Madurai South Taluk,
Collectorate Buildings,
Madurai - 20.

... Appellants/Respondents

Vs.

Pandithurai

... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 27.08.2010 made in W.P(MD)No.616 of 2009, on the file of this Court.

Prayer in WP(MD)No.616/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to proceedings of the 1st respondent, in R.C.No.783 of 2008 mines dated 25/12/2008 and quash the same as illegal.



For Appellants

: Mr.A.K.Baskara Pandian,
Special Government Pleader.

For Respondent

: No appearance

WEB COPY

JUDGMENT

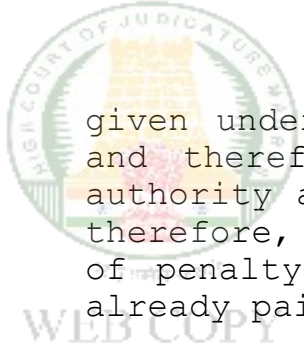
(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The official respondents in W.P(MD)No.616 of 2009 are the appellants.

2.The respondent/writ petitioner made a challenge to the proceedings of the first appellant herein/first respondent, dated 25.12.2008, in and by which, the penalty of a sum of Rs.26,107/- passed by the original authority came to confirmed. The Writ Petition, after contest, was allowed on 27.08.2010 and aggrieved by the same, the official respondents has filed the present Writ Appeal.

3.The facts leading to the filing of this writ appeal, as had been narrated in detail and in *extenso* in the impugned order, which is the subject matter in the writ petition. Therefore, it is unnecessary to restate the facts once again except to briefly narrate the relevant facts, for the purpose of disposal of this writ appeal:

The lorry bearing Registration No.TN-59-B-9999 was owned by the respondent/writ petitioner and Transport Permit was issued under Rule 36(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959, in Form No.Appendix XII-A for transporting two units of sand from Athanur Village to Madurai and the same was allowed between 09.30 a.m and 01.30 p.m., on 20.05.2008. However, the lorry reached the designated place at about 06.25 a.m., on the next day i.e., on 21.05.2008, and the explanation offered was since the lorry got repaired, it took time to make good, however, the said plea made by the owner of the lorry/respondent/writ petitioner was disbelieved and the Revenue Divisional Officer, Madurai/the third respondent herein has levied a penalty of Rs.26,107/-. The respondent/writ petitioner made repeated challenges by filing series of Writ Petitions, wherein, the Writ Petitions came to be disposed of, directing him to avail the alternate remedy and accordingly, he availed the alternate remedy in the form of appeal before the Appellate Authority and the said Appellate Authority, vide proceedings, dated 25.12.2008, has dismissed the same and it was put to challenge in W.P(MD)No.616 of 2009 and it was entertained and the first respondent has filed the counter-affidavit and the learned Single Judge, after taking note of the materials, found that though the time has been indicated in the procedure leaf, it cannot be presumed that within the time limit, the lorry has to reach the designated place and further stated that no such power has been



given under the said Rules to restrict the validity of the permit and therefore, concluded that the order passed by the original authority as well as the Appellate Authority lacks jurisdiction and therefore, allowed the Writ Petition and quashed the impugned order of penalty with a further direction to refund the penalty amount already paid by the respondent/writ petitioner.

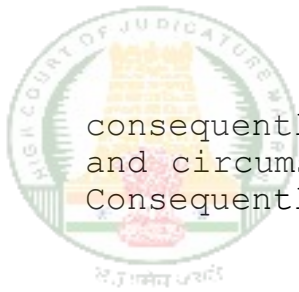
4.Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellants/official respondents has invited the attention of this Court to Rule 36(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959, as well as Appendix XII-A and would submit that as per Clause 5 of the said permit validity period of the permit is **"From: To: (should be restricted to a maximum of seven days only)"** and as such, the authorities are competent to impose a condition as to the period, in which the units of sand to be transported to the designated place and further pointed out that under Rule 36(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959, permits can be issued in Appendix XII, XII-A, XIII and XIII-A and insofar as the present case is concerned, Appendix XII-A would come into place and admittedly, the lorry reached the designated place on the next day ie., on 21.05.2008 only at about 06.25 a.m., and as such, the explanation with regard to the repair of the lorry has been rejected and penalty has been rightly imposed.

5.Though the respondent has been served and his name is also printed in the cause-list, there is no representation on his behalf.

6.Column No.5 of Appendix XII-A prescribes validity period of the Transport Permit and it is restricted to a maximum of seven days. Once a maximum period is prescribed, the minimum period would also come in the place and admittedly, the Transport Permit was issued with a condition that two units of sand to be transported between 09.30 a.m., and 1.30 p.m., on 20.05.2008 and admittedly, it reached the designated place only on the next day ie., on 21.05.2008. It was observed in the impugned order that if the maximum period has been prescribed, the validity period of permit cannot be restricted.

7.In the considered opinion of this Court, the said reason assigned in the impugned order is wholly unsustainable for the reason that once the maximum of seven days period is prescribed, the authority is competent to issue minimum period, in which, the units of sand is to be transported, and the respondent/writ petitioner having issued with the Transport Permit and accepted the same, cannot plead that no minimum period can be prescribed. In the light of the reasons assigned above, this Court is of the considered view that the impugned order passed in the Writ Petition warrants interference.

8.In the result, the Writ Appeal is allowed and the order, dated 27.08.2010 made in W.P(MD)No.616 of 2009 is set aside and



WEB COPY

consequently, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai District.
 2. The Deputy Director,
Geology and Mining,
Department of Geology and Mining,
Collectorate Buildings, Madurai - 20.
 3. The Revenue Divisional Officer,
Collectorate Premises,
Madurai - 20.
 4. The Tahsildar,
Madurai South Taluk,
Collectorate Buildings,
Madurai - 20.
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58925

PS

TE/SKN-RSK/SAR-1 : 28/03/2018 : 4P/6C

W.A(MD)No.35 of 2011
against WP(MD)No.616 of 2009
and M.P(MD)No.1 of 2011
15.03.2018