

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal Nos.230 & 240 of 2018

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

These two appeals, under Clause 15 of the Letters Patent, are preferred against the order passed by the Learned Single Judge in W.P.Nos.36738 and 36959 of 2017 dated 18.01.2018. The sole appellant in the aforesaid two Writ Appeals is the 10th respondent in W.P.No.36738 of 2017, and the 13th respondent in W.P.No.36959 of 2017. The unofficial respondents herein filed the aforesaid Writ Petitions seeking a mandamus to declare the action of the official respondents, in permitting the appellant herein to quarry and conduct mining operations in the subject area, as illegal, arbitrary, contrary to the A.P. Minor Mineral Concession Rules, 1966 (for short "the Rules"), and as violating their rights under Articles 14 and 21 of the Constitution of India.

By the order under appeal, the Learned Single Judge directed the officials of the A.P. Pollution Control Board to forthwith cause an inspection of the subject area, where the complained operations were being carried on by the unofficial respondent, and also the surrounding areas, to find out whether any damage was done to the ecological system, the environment and the properties, on account of the operations thus far done by the unofficial respondent, and to have the same assessed; and, in the event it is noticed on such inspection that damage is done, the A.P. Pollution Control Board and others should initiate action against all concerned, who are responsible, as per law; and to take further steps for restoration, at the cost of the concerned, on the basis of the principle "polluters pay".

The appellant herein made an application for grant of mining lease and for environmental clearance, and their applications are said to be still pending consideration before the authorities concerned. It is not in dispute that prior environmental clearance from the State Level Environmental Impact Assessment Authority, and consent for establishment and operations from the A.P. Pollution Control Board, are required to be obtained before commencing quarrying operations. While the appellant's applications are said to be pending consideration, it is not in dispute that no such permission has been granted to them till date.

While Sri N.Subba Rao, learned counsel for the appellant, would fairly state that prior environmental clearance, and consent for establishment and operations, is required before a permanent lease is granted to quarry mineral, he would contend that grant of temporary permits, under Rule 9(iii) of the Rules, stand on a different footing; and, since temporary permits are granted only for executing works for the Government, Rule 9(iii) of the Rules would constitute an exception, and temporary permits would not require either environmental clearance, or consent for establishment/operation, before grant of these permits. Learned counsel would further submit that the observations made by the Learned Single Judge, in the order under appeal, would also prejudice the appellant's case both before the State Level Impact Assessment Authority and the A.P. Pollution Control Board; and for this reason also, the order under appeal must be set aside.

On the other hand, Sri V.R.N.Prashanth, learned counsel for the respondents-writ petitioners in W.P.No.36959 of 2017, would submit that the respondent-writ petitioners had, necessarily, to invoke the jurisdiction of this Court because of the apathy and

indifference of the officials concerned; this is the second round of litigation; and it is because severe environmental damage has already been caused, in the subject area, were the respondent-writ petitioners constrained to invoke the jurisdiction of this Court, seeking its intervention to prevent the appellant herein from carrying on quarrying operations without obtaining environmental clearance, and consent for establishment/operations. He further submits that repeated grant of temporary permits is impermissible, as what cannot be done directly cannot also be permitted to be done indirectly.

Sri G.Ramachandra Rao, learned Standing Counsel for the A.P. Pollution Control Board, would submit that, while the State Level Authority was not constituted when temporary permits were granted earlier to the appellants, the said authority has since been constituted; and the appellant's application, for grant of environmental clearance, is pending consideration before them.

Since reliance is placed on Rule 9(iii)&(iv) by Sri N.Subba Rao, learned counsel for the appellant, it is necessary to refer to the said Rules which read as under:

“(iii) In respect of minor minerals except those mentioned in sub-rule (5) of Rule 12 which are worked to meet the immediate or timely requirements, the Assistant Director may permit to carry on quarrying operations on payment of seigniorage fee in advance.

(iv) Permit granted under sub-rule (iii) shall in no case be for more than sixty days.

Provided that the applications for grant of a lease or a permit in respect of a reserve forest land shall be disposed of after consultation with the Divisional or the District Forest officer concerned.

Provided further that on an application or by way of auction for grant of any minor mineral in the scheduled areas referred to it by the Assistant Director of Mines and Geology or the Officer nominated by the State Government, the Gram Sabha or the Gram Panchayat shall communicate its recommendation, whereupon the application or by way of auction for grant of quarry lease

for any minor mineral in such Scheduled Areas shall be processed in accordance with the provisions of Law.”

A temporary permit can be granted, under Rule 9(iii) of the Rules, to meet immediate or timely requirements, on condition that seigniorage fee is paid in advance. Such temporary permits, in terms of Rule 9(iv) of the Rules, cannot be granted for a period of more than 60 days. Under the first proviso, where applications are made, for grant of a lease or a permit in respect of reserve forest land, the said application is required to be disposed of after consultation with the Divisional or the District Forest officer concerned.

These Rules, made in the exercise of the powers conferred under Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957, cannot be so read as to negate the provisions of the Environmental Protection Act or the other environmental laws in force. Accepting the submission of Sri N.Subba Rao, learned counsel for the appellant, would mean that, while a permanent lease cannot be granted for quarrying of road metal without prior environmental clearance and consent for establishment/operations, no such restriction is applicable in cases where temporary permits are granted. In such an event, every lessee can avoid obtaining prior environmental clearance, and consent of the A.P. Pollution Control Board for establishment/operations, and continue carrying on mining operations on the strength of the temporary permits granted to them periodically; and the authorities concerned can, instead of granting permanent lease, keep granting temporary permits, one after the other, in order to help the lessee avoid obtaining such clearances.

Sri N.Subba Rao, learned counsel for the appellant, would submit that the quarry metal available in the subject leased area is in

millions of tonnes, and temporary permits have been granted only to quarry 5000 cubic meters; and grant of such temporary permits would not result in exhaustion of the entire mineral available in the subject area. While this submission of the Learned Counsel, cannot be said to be without merit, it is evident from the order under appeal that the appellant was granted temporary permits on 06.05.2017, 19.08.2017, 28.08.2017 and 23.10.2017 to excavate mineral from the subject area.

In our view Rule 9(iii) of the Rules cannot be so construed as to result in the provisions of the Environmental Protection Act, and other environmental laws, being rendered redundant or nugatory. As quarrying operations can only be undertaken, after obtaining prior environmental clearance and prior approval of the Pollution Control Board, no quarrying operations can be carried on, be it on a permanent lease being granted or temporary permits being issued, without obtaining prior clearance/approval as aforementioned.

While we see no reason to interfere with the order of the Learned Single Judge, directing that an inspection be caused and for action to be taken pursuant thereto, we find merit in the submission of Sri N.Subba Rao, learned counsel for the appellant, that the observations made in the order under appeal may well be construed as the appellant having been held disentitled for grant of environmental clearance, the application for which is pending before the State level Authority, and for consent for establishment the application for which is pending before the A.P. Pollution Control Board. Suffice it, therefore, to make it clear that both the State Level Authority and the A.P. Pollution Control Board shall consider the appellant's application, for grant of clearance/consent, on its merits

uninfluenced by any observations made either in the order under appeal or in the order now passed by us.

Subject to the aforesaid observations, both these Writ Appeals fail and are, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

15th March, 2018
JSU



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Date: 15.03.2018

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