

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT
WRIT PETITION No. 34878 OF 2018

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Ms.N.Malathi Naidu for writ petitioner, the learned Government Pleaders for Environment & Mines and Mr.G.Ramchandra Rao for respondent Nos.2 and 3.

The petitioner has obtained quarry lease for extraction of road metal vide proceedings 67/Q1/2007 dated 06.03.2007 read with proceeding No.5077/Q/2006 dated 09.03.2007 for a period of 10 years. The quarry lease is covered by Survey No.111 of Chinnapalakaluru Village, Guntur Rural Mandal, Guntur District. Respondents 2 and 3 issued consent for operation dated 09.02.2018 for establishing and operating a stone crusher in Survey No.723. The consented capacity of stone crusher is 50 Tonnes Per Day (TPD). Respondents 2 and 3 issued show cause notice dated 19.06.2018 to petitioner against alleged non-compliance of conditions imposed in the consent order dated 09.02.2018. The respondents through letter No.G-723/APPCB/ZO/VJA/CFE/ORANGE/2018 dated 26.05.2018 rejected the request of petitioner for expansion of the stone crusher from the existing consented capacity of 50 TPD to 700 TPD. While matters stood thus, respondents 2 and 3 issued show cause notice

dated 19.06.2018 calling upon the petitioner to show cause as to why the stone crusher under operation in Survey No.723 shall not be stopped for violating the conditions imposed in the consent order. At the hearing, the learned counsel submit that the subject stone crusher is not in operation. On 03.07.2018, the petitioner requested respondent Nos. 2 and 3 to consider the request of petitioner for running or operating the unit as per the permitted capacity of 50 TPD. Under these circumstances, the writ petition is filed for the following relief:

“Writ of Mandamus declaring the action of Respondents No 2 and 3 in not considering the petitioner Online application is unreasonable, unjust, arbitrary against the Principles of Natural Justice and consequently direct the respondents to set aside the Show Cause Notice vide Notice No GSC-149/APPCB/RO-GNT/2018-563 dated 19-06-2018 by allowing the petitioner to commence production from 50 TPD to 700 TPD...”

We have perused the record and noted the submissions of learned counsel for petitioner, namely that the Board in principle has consented to continuing the operations at the sanctioned capacity and secondly the show cause notice to close down or stop production is completely untenable and unsustainable. It is further contended that the petitioner, if is aggrieved by the order rejecting the request of petitioner for expansion through communication dated 26.05.2018 the petitioner will have to work out the remedies under law. The petitioner without prejudice to such remedies, through representation dated 03.07.2018 requested to permit the petitioner to operate the stone crusher with the

capacity sanctioned through consent order dated 09.02.2018. The learned standing counsel submits that the Board in principle has taken decision not to permit the petitioner to operate at the enhanced capacity. The petitioner if aggrieved by such decision has to challenge the decision evidenced through letter dated 26.05.2018 before the competent Tribunal under Environmental Laws, secondly the petitioner at best in the present writ petition may be entitled to a direction for consideration of the reply dated 03.07.2018. He further submits that as the show cause notice refers to a few omissions in adhering to the conditions stipulated in the consent order dated 09.02.2018, it is therefore open to the Board to examine the compliance of these conditions and the competence of petitioner to conform to the standards prescribed in the consent order dated 09.02.2018. Apart from the above, it is stated the petitioner is required to conform to the emissions standards.

The petitioner applied for consent for expansion from 50 TPD to 700 TPD. The Board through communication dated 26.05.2018 negated the request of petitioner for expansion from 50 TPD to 700 TPD. The petitioner, if so advised can challenge the decision on legal and factual grounds and work out the remedies in accordance with law. In the reply dated 03.07.2018, petitioner requests for permission in the interregnum to continue to operate the unit at 50 TPD. To meet the ends of justice particularly, after taking note of the fact that the petitioner has quarry lease and is executing a few orders, we direct respondents 2 and 3 and also the

Environmental Engineer, Regional Office, A.P. Pollution Control Board to consider and pass orders on the reply dated 03.07.2018 as expeditiously as possible, preferably within two weeks from the date of receipt of copy of the order. The petitioner is given liberty to re-submit the reply along with the copy of this order to respondents 2, 3 and also the Environmental Engineer, Regional Office, Guntur for expeditious consideration and disposal. The writ petition is disposed of as indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.



THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date: 27.09.2018

Note:

C.C. in one week.

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