

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 06.08.2019	Orders Pronounced on 09.08.2019
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CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

1.W.P.No.16545 of 2010
and
M.P.No.1 of 2010

S.Annadurai

... Petitioner

..vs..

1. The Government of Tamil Nadu represented by its Secretary to Government Industries Department Fort St. George Chennai - 600 009.
2. The Director of Geology and Mining Guindy, Chennai - 600 032.
3. The District Collector Dharmapuri District Dharmapuri.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in G.O.(D) No.71, Industries (MME.2) Department dated 19.04.2010 confirming the orders of the second and third respondents passed in proceedings Rc No.3108/MM2/2007 dated 27.03.2008 and ROC No.450/2006 (Mines) dated 08.02.2007 respectively and quash the same.

For Petitioner : M/s.V.Sanjeevi

For Respondents : Mr.J.Ramesh
Additional Government Pleader

ORDER

Writ Petition is filed challenging the concurrent orders of the respondents.

2. The case of the petitioner is as follows:-

(i) the petitioner is the owner of the lorry bearing Registration No.TN-30-U-5868. The petitioner vehicle came from Madurai after offloading the goods on 09.10.2006. The lorry broker approached the driver to transport granite block near Melur. Accordingly, the lorry driver without the knowledge of the petitioner, took the granite block from the lease hold area of one Thiru.P.K.Selvaraj in Thiruvathavur village, Melur Taluk, Madurai District. Thereafter, the petitioner came to know that the driver of the lorry is instructed to take granite block from the lease hold area of Thiru.P.K.Selvaraj at Thiruvathavur village to Jignai, Athipalli, near Bangalore, by giving a delivery note. The driver of the lorry does not know about the requirement of the transport permit under the Tamil Nadu Minor Mineral Concession Rules, 1959, herein after called as State Rules, for transporting the minerals. The driver of the lorry believed that the delivery note is sufficient and is a valid document for transporting the granite block.

(ii) The petitioner also averred that when the petitioner lorry was coming near Palacode on 09.10.2006, the Tahsildar, Palacode intercepted the vehicle and asked the documents from the driver. When the driver had shown the documents, he was informed that the granite block was transported without valid transport permit. Accordingly, the Tahsildar seized the vehicle with granite block and handed over the same to the Sub-Inspector of Police, Palacode for safe custody. Immediately thereafter, the Assistant Geologist, Madurai, measured the granite block and found $352 \times 232 \times 203 = 16.577$ CBM.

(iii) The petitioner further averred that on 11.10.2006, third respondent/District Collector issued a memo to the petitioner to appear before the Office of the Assistant Director (Geology and Mining), Dharmapuri, and to produce all original documents relating to the petitioner vehicle and the driver and subsequently, the petitioner produced all necessary documents and explained the negligence of the driver in not possessing the transport permit under the provision of relevant Rules. Thereafter, the Assistant Director (Geology and Mining), Dharmapuri, issued a memo dated 23.10.2006 calling upon the petitioner to appear for an enquiry before the third respondent on 30.10.2006. In compliance, the petitioner and his driver appeared and submitted that he is ignorant of possessing the transport permit and requested for release of vehicle and thereafter, adjudication was adjourned to 01.11.2006 and

06.11.2006.

(iv) In the mean while, the petitioner filed Writ Petition before this Court in W.P.No.42173 of 2006 for mandamus directing the release of lorry pending enquiry before the third respondent. This Court by its order dated 06.11.2006 directed the third respondent to proceed with the enquiry, which was scheduled to be posted on 06.11.2006 at 3.30 p.m and conclude the enquiry on the same day itself. This Court further directed the respondent/collector to release the lorry by imposing conditions. In compliance of the same, the petitioner attended enquiry on 06.11.2006 and pleaded for release of lorry and submitted that the petitioner had nothing to do with the illicit mining or transportation of minerals; and that the driver of the lorry did not know about the necessity to possess transport permit and the granite block is transported from the quarry of Thiru.P.K.Selvaraj of Thiruvathavur Village. However, the third respondent passed an order on that day itself imposing penalty of Rs.4,17,248/-.

(v) Aggrieved by the said order, the petitioner again approached this Court in W.P.No.43657 of 2006. This Court by its order dated 13.11.2006, set aside the order of the third respondent dated 06.11.2006 and remitted the matter back to the District Collector to reconsider the issue after giving opportunity to the petitioner and also after hearing the quarry owner Thiru.P.K.Selvaraj, from whose quarry granite block has been loaded in the lorry and transported at the instance of the quarry owner and to pass appropriate orders. This Court issued further direction, pending such orders to be passed, directing the release of lorry subject to certain conditions mentioned therein. Subsequently, the lorry was released after compliance of the conditions. After release of lorry, the District Collector fixed the enquiry. After conducting enquiry, again the third respondent/ District Collector, without considering the explanation of the petitioner, levied the penalty of Rs.4,17,248/- for granite block measuring 16.557 CBM.

(vi) Aggrieved by the erroneous order of the third respondent dated 08.02.2007, the petitioner approached the second respondent/Director of Geology and Mining, Chennai on 12.03.2007. The second respondent also, without properly considering the case, dismissed the first Appeal on 27.03.2008.

(vii) Aggrieved by the second respondent order dated 27.03.2008, confirming the third respondent order dated 08.02.2007, the petitioner preferred the second appeal before the first respondent, however, the first respondent/Government rejected the second appeal by its order in G.O.(D) No.71, Industries (MME.2) Department dated 19.04.2010. Aggrieved by the said order, the present Writ Petition is filed.

3. Mr.V.Sanjeevi, learned counsel appearing for the petitioner would submit that admittedly the petitioner is not the owner of the quarry and he is the owner of the lorry and the said lorry driver did not know the procedure for getting permit from the competent authority for loading the granite block. However, the entire proceedings were initiated against the owner of the lorry, which is unsustainable one. As per the Mines and Minerals Act, the authority has to take action only against the owner of granite block. Hence, taking action against the lorry owner is unsustainable one.

4. The learned counsel for the petitioner would further submit that as per Section 21 of the Central Act, penalty can be imposed. Whoever contravenes the provisions of Section 4(1-A) shall be penalised with the term of 2 years or with fine extending to Rs.25,000/-. However, in the present case, the entire action was initiated by invoking Tamil Nadu Minor Minerals Concession Rules, 1959 (herein after called as 'State Rules'), which is unsustainable one, since when the Central Act occupied the field, the State Government cannot invoke the State Rules for imposing penalty. Very same issue was raised before the Hon'ble Division Bench of this Court in a batch of Writ Petitions in W.P (MD) Nos.19936 of 2017 etc., wherein the Hon'ble Division Bench of this Court has held that as per Section 21 of the Act, the prosecution can be lodged for the contravention of the provisions of the Act with specific reference to Section 4(1-A). Therefore, the power of adjudicating the contravention is no longer available with the State authority, but only with the Court. In view of the above clear terms by the Hon'ble Division Bench, the proceedings so initiated by the State authorities under the State Rules, viz., Tamil Nadu Minor Minerals Concession Rules, 1959 is unsustainable one. The learned counsel would also submit that in fact, as per Section 21 of the Central Act, the maximum penalty is only Rs.25,000/-. However, in the present case, the State authorities/respondents herein imposed a penalty of Rs.4,17,248/-, which is unsustainable one and the provisions of State Rules are not applicable to the present case on hand. Hence, he prays for allowing the Writ Petition.

5. Per contra, Mr.J.Ramesh, learned Additional Government Pleader appearing for the State/respondents would submit that the petitioner's vehicle was intercepted by the Tahsildar, Palacode and he found the petitioner transporting the granite block without dispatch slip issued by the Department of Geology and Mining. After affording an opportunity of personal hearing and complying the principles of natural justice, the original authority, namely Assistant Director of Geology and Mining, conducted the adjudication in the presence of lorry driver, one Murugesan. During the personal enquiry, the Power of Attorney

holder of Thiru.P.K.Selvaraj and Manager of the quarry, in front of the lorry owner, stated that the above granite block was not transported from Thiruvathavur quarry. After fulfilled enquiry, the original authority levied the penalty by invoking Rule 36(5)(b) of Tamil Nadu Minor Minerals Concession Rules. The said order was challenged before the appellate authority as well as State authority. The learned Additional Government Pleader would also submit that since the original authority as well as appellate authorities, including the Government, considered the matter and concurrently concluded that the petitioner has violated Rule 36(5)(b) of Tamil Nadu Rules and imposed penalty, which cannot be interfered in a mechanical manner, since the fact finding authority including the revisional authority concurrently decided the matter against the petitioner, this Court, exercising power under Article 226, need not interfere with the order, accordingly, he prays for dismissal of Writ Petition.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7. The undisputed facts of the present case are that the Tahsildar, Palacode has intercepted the lorry bearing Registration No.TN-30-U-5868 on 09.10.2006 and found that granite block was transported without dispatch slip issued by the Department of Geology and Mining. Immediately thereafter, the said granite block along with the lorry was seized by the authorities and handed over to the Sub-Inspector of Police, Palacode. After conducting measurement, the Assistant Director of Geology and Mining issued notices dated 11.10.2006 and 23.10.2006 and ordered for enquiry. The petitioner appeared before the enquiry and mainly contended that granite block not belongs to him and it allegedly belongs to Thiru.P.K.Selvaraj, who is the granite owner of Thiruvathavur quarry. The lorry driver on its own transported the granite block from Thiruvathavur to Jingai, Athipalli, near Bangalore. However, the fact remains that the petitioner did not possess any valid document for transporting granite block, but he possessed only delivery note issued by the mineral owner; however, the fact remains that he has to possess the dispatch slip issued by the authorities of Department of Geology and Mining. Admittedly, the petitioner has to possess dispatch slip and as per sub-rule 5(b) of Rule 36 of Tamil Nadu Minor Mineral Concession Rules, 1959, all the vehicles used for transportation of any mineral shall be in possession of individual dispatch slip for the quantity of minerals available in the vehicles at all the time of transportation of the mineral by the vehicle.

8. Further it is relevant to note that the petitioner mainly contended that the granite block loaded from the lease

hold area of one Thiru.P.K.Selvaraj, Thiruvathavur Village. During the personal enquiry before the Assistant Director of Geology and Mining, Power of Attorney holder of Thiru.P.K.Selvaraj and the Manager of the quarry appeared and they clearly deposed that the above block was not transported from Thiruvathavur quarry. Though the petitioner appeared at the time of personal enquiry and in front of whom, Power of Attorney of Thiru.P.K.Selvaraj denied the transportation of granite block from his quarry, the petitioner did not choose to cross examine the granite land owner and further, the petitioner did not produce any evidence to show that the mineral was loaded from Thiruvathavur quarry. Therefore, the respondent authorities proceeded the matter and levied penalty as the action of petitioner is violative of Rule 36(5) (b) of Tamil Nadu Minor Mineral Concession Rules. The learned counsel appearing for the petitioner vehemently contended that by invoking the State rules, the State authority has no power to impose penalty as already the Central Act seized of.

9. This Court perused the order (cited supra) of the Hon'ble Division Bench of this Court. The issue before the Hon'ble Division Bench of this Court was as to whether Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959 still holds a field, notwithstanding the amendment made to Section 21 of the Central Act. The Hon'ble Division Bench of this Court held that the power of adjudicating a contravention is no longer available with the State authorities, but only with the Court. The above decision of the Hon'ble Division Bench is not applicable to the present case.

10. Admittedly, in the present case, the State authority has not imposed penalty under Section 21 of the Central Act. The respondents proceeded the matter by invoking Rule 36(5) (b) of Tamil Nadu Minor Mineral Concession Rules, 1959 and the said Rule clearly says that whenever any person contravenes the conditions of a quarrying permit or quarrying lease granted under the Rules, the competent authority, as the case may be, shall after giving notice, charge and that person and recover from him enhanced seigniorage fee upto a maximum of 15 times the normal rate, subject to a minimum of Rs.25,000/-. In the present case, the original authority, being the fact finding authority, passed the impugned order by invoking Rule 36(5) (b) of State Rules and levied penalty, which is legally permissible. First appellate authority as well as second appellate authority, viz., Government also concurred with the finding of the original authority. This Court cannot find error on the facts of the records. Hence, I do not find any error in the order passed by the authorities.

11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Government of Tamil Nadu
Industries Department
Fort St. George
Chennai - 600 009.

2.The Director of Geology and Mining
Guindy,
Chennai - 600 032.

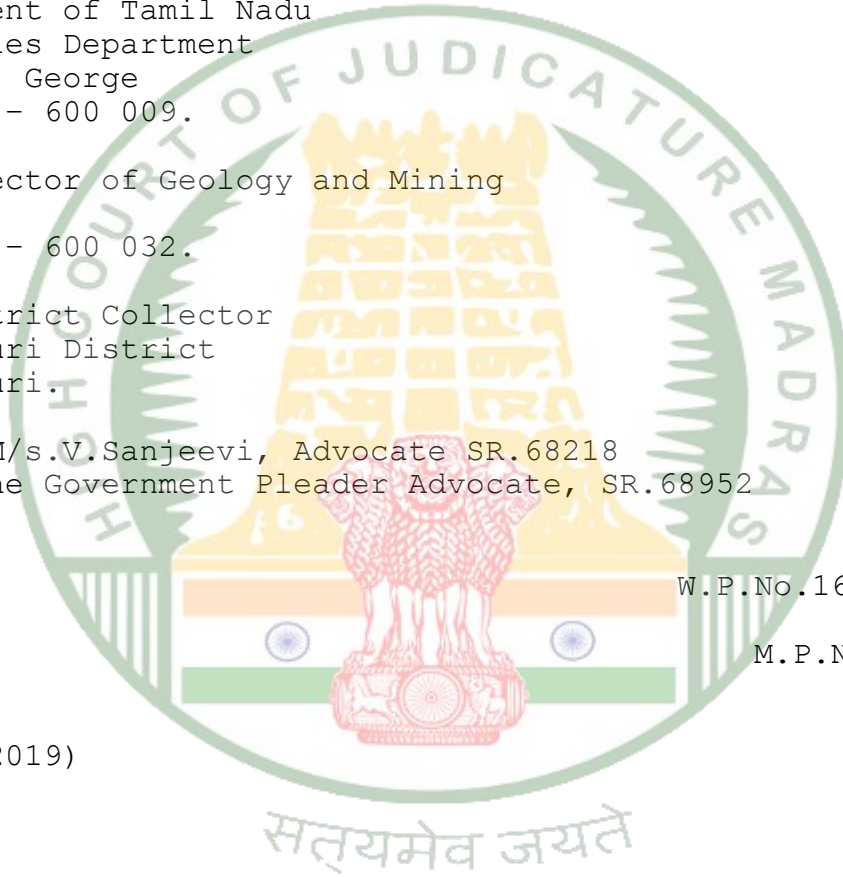
3.The District Collector
Dharmapuri District
Dharmapuri.

+1cc to M/s.V.Sanjeevi, Advocate SR.68218

+1cc to the Government Pleader Advocate, SR.68952

W.P.No.16545 of 2010
and
M.P.No.1 of 2010

BS (CO)
CB(09/10/2019)



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