

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:.. 15.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M. SATHYANARAYANAN
&
THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

W.P.No.17452 of of 2018 &
W.M.P.Nos.20735 & 20736 of 2018

N. Dhanapal

... Petitioner

Vs.

1. The Executive Engineer,
Public Works Department,
Mining and Monitoring Department,
Trichy 605 602.
2. The District Collector,
Collectorate, Ariyalur District.
3. The State Level Environmental Impact
Assessment Authority,
represented by its Member Secretary,
Panagal Building, Saidapet,
Chennai.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the 3rd respondent culminating in the order in Lr.No.SEIAA-TN/F.No.6476/EC/1(a)/3965/2017 dated 16.2.2018, quash the same .

For Petitioner : Mr. A. Yogeshwaran

For Respondents : Mr.E. Manoharan,
Addl. Govt. Pleader for R1 and R2.
Mr.S.K.Sinivasa Murthy for R3

ORDER

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

The matter in issue pertains to the operation of the Government sand quarry within the prohibited distance especially the area within 10 kilometres from Karaivetti Birds Sanctuary which, according to the learned counsel for the petitioner, should be taken as National Park for Wild Life Sanctuary and it was entertained.

2. The Executive Engineer, Public Works Department, Mining and Monitoring Division, Trichy has filed a status report dated 25.9.2019 and it was disclosed that the Public Works Department, after obtaining necessary clearance, had operated the sand quarry in Coleroon river bed from 4.5.2018 at SF No.158(P) for an extent of 16 hectares in Thirumanur Village of Ariyalur Taluk. It is further stated that the State Level Environment Impact Assessment Authority (SEIAA) has granted permission under 'B2' category, where the lease area is less than 25 hectares and the notification issued by Ministry of Environmental Forest and Climate Change, Government of India dated 15.1.2016 also contemplates that the general conditions shall not apply for project or mining activity of Category B2 up to 25 Hectare of mining lease area. It is also the stand of the said official that the Karaivetti Birds Sanctuary is nearly 8.3 kilometres away from the operational area and moreover the sand quarry operation is simple, semi mechanised operation without drilling and blasting, and as such, clearance from the National Wild Life Board is not at all required.

3. Mr. E.Manoharan, Special, Government Pleader appearing for the respondents 1 and 2 would submit that the Public Works Department had stopped the quarrying operation from 18.5.2019, until further orders and subsequently, the Principal Chief Conservator of Forests and Chief Wild Life Warden, sent a communication dated 22.5.2019 with an enclosure of map showing the distance between Karaivetti Birds Sanctuary and sand quarry is about 07.89 kilometres, and the same may not be put against the Public Works Department. As per the earlier requirements, they have complied with all the lapse and that too, in the event of the closure of quarrying operation, nothing survives for further adjudication in this writ petition and prays for appropriate orders.

4. Mr. A.Yogeswaran, learned counsel for the petitioner in his usual way, would vehemently contend that now it came out on record in the form of the status report of the 1st respondent that the sand quarry is located within the prohibited distance and as such whatever, environment degradation and loss to ecological environment can be set right only by imposing appropriate penalty and he has also drawn the attention of this Court to the order passed by the National Green Tribunal,

Principal Bench, O.A.No.186 of 2016 (M.A.No.350 of 2016) etc. Batch (Satendra Pandey and others Vs. Ministry of Environment, Forest and Climate Change and another), wherein, in paragraph 21, it is observed as follows;

'21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).'

5. In the light of the above facts and circumstance of the case, the learned counsel for the petitioner insist that the concerned official entity shall be mulcted with cost and consequences in the form of compensation or penalty.

6. Mr.S.K.Sinivasa Murthy, appearing for the 3rd respondent has drawn the attention of this Court, the report dated 8.11.2019 and would submit that this court in the order dated 31.10.2019, has taken into consideration the suggestion made by the Project Director, Sand Quarrying Operations, Tamilnadu as to the causing of personal inspection by SEIAA, took a decision that henceforth whenever any application for environmental clearance for sand mining is received, the same will be considered only after inspecting the project site by the sub-committee of State Level Expert Appraisal Committee and only after the receipt of their report, the State Level Expert Appraisal Committee would submit its recommendation to the State Level Environment Impact Assessment Authority-Tamil Nadu for further consideration.

7. In response to the said submission, learned Additional Government Pleader submitted that a consequent decision has also been taken not to reopen the said sand quarry and in the light of the facts and circumstances, though permission was accorded to quarry 7376,000 units, sand was quarried only about 98,000 units and in the light of the fact that the quarrying operation is closed, this Court may not grant the

prayer sought for by the learned counsel for the petitioner.

8. This Court has carefully heard the rival submissions and perused the materials placed on record.

9. In the light of the fact that quarrying operations came to halt on 18.5.2019, and taking into consideration the submission made by the learned Additional Govt. Pleader appearing for official respondents, on instructions, that in future, the said sand quarry will not be put up into operation and further taking note of the fact that the subsequent communication has prescribed the distance between Birds Sanctuary and sand quarry area as around 7.89 Kilometres, this Court is of the considered opinion that no further orders are necessary in this writ petition.

10. However, taking into consideration, the vehement and forceful plea made by the learned counsel appearing for the petitioner as to the imposition of penalty/compensation for having done quarrying operation within the prohibited distance of the Birds Sanctuary, and also the stand of the 3rd respondent as to the conducting of personal inspection by the Sub Committee of SEIAA, this Court is of the considered view that in the present facts and circumstances, especially, the official respondents 1 and 2 purported to have acted on the report of the 3rd respondent, is of the considered view that no penalty/compensation can be levied. However, in respect any ongoing quarrying operation, proper care is to be taken by the concerned entities not to violate, any of the conditions imposed by SEIAA.

11. The Writ Petition is disposed of accordingly subject to above observation. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msr

To

1. The Executive Engineer,
Public Works Department,
Mining and Monitoring Department, Trichy 605 602.

2.The District Collector,Collectorate, Ariyalur District.

3.The State Level Environmental Impact
Assessment Authority,
represented by its Member Secretary
Panagal Building, Saidapet,
Chennai.

+1 CC to Mr.K. Srinivasamurthy, Advocate sr 95003.

+1 CC to Govt. Pleader sr 95591.

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BP(CO)
SP(30/12/2019)