



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.13460 of 2018

and

W.M.P(MD)Nos.12272 & 12273 of 2018

K.Selvi

... Petitioner

Vs.

1.The Director of Zoology and Mining,
Guindy, Chennai - 32.

2.The District Collector,
Collectorate Building,
Dindigul District.

3.The Revenue Divisional Officer,
Palani Revenue Division,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in Rc.No.3002/MM13/2018, dated 03.05.2018 confirming the order passed by the second respondent in his proceeding in Na.Ka.No.145/2014 (Mines) dated 06.10.2017 and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.R.Murugan,
Additional Government Pleader.

ORDER

The petitioner challenges an order passed by the first respondent/Director of Zoology and Mining, Guindy, Chennai dated 03.05.2018 rejecting an appeal filed by her in terms of Rule 36-C(2) of the Tamil Nadu Minor Minerals Concession Rules, 1959 (in short



'Rules') as time barred. The merits of the appeal have not been adjudicated.

2.The brief facts in relation to the Writ Petition are as follows:-

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2.1. The petitioner has been granted a quarry lease of rough stone in Government land in S.F.No.529/1 admeasuring 2 hectares for a period of 10 years between 07.07.2008 and 06.07.2018. Disputes arose *inter se* the petitioner and neighbouring land owner, that led to an order passed by the third respondent / the Revenue Divisional Officer imposing penalty for various alleged violations of the quarry license.

2.2.Though the petitioner raises varied challenges on merits in regard to the impugned order levying penalty, I refrain from advertng to the same insofar as they did not constitute the *lis* before me. Suffice it to state that the levy of penalty was appealed against before the second respondent, who vide order dated 22.11.2013, confirmed the same.

2.3.A further appeal was filed before the first respondent / the Director of Zoology and Mining, who on 12.01.2017 allowed the petitioners' appeal on the ground that the order had been passed contrary to the principles of natural justice as no notice had been issued prior to passing thereof. The matter thus stood remanded, with a direction to the authority to measure the property in the presence of the petitioner and pass orders thereafter, in accordance with the applicable rules and statutory provisions.

2.4.As directed, inspection was conducted. This culminated in an order being passed by the second respondent dated 06.10.2017 confirming the levy of penalty originally levied, albeit to a lesser extent than what had been originally imposed. An appeal was filed under Rule 36-C(2) of the Rules before the first respondent, who passed the impugned order rejecting the same on the ground of delay. It is as against the order of the first respondent that the petitioner is before this Court.

3.The argument advanced is that Rule 36-C only provides for a period of 30 days, within which the appeal should be filed but does not stipulate any specific period, within which, delay in filing the appeal may be condoned. Hence, the first respondent was well within the law to condone any delay that may have been occasioned in filing of the appeal. Reliance in this regard has been placed on the following decisions:

(i) *A.Aruljothi vs. The Deputy Commissioner of Labour*, dated 28.06.2002.

(ii) *Mervin Rajasekar and another Vs. The Secretary, Commercial Tax Department, Fort St. George, Chennai - 9 and others (W.P.No.529 of 2003, dated 24.08.2018)*



(iii) *G.Chokkanlingam and others Vs. The Joint Registrar of Co-operative Society (Review Officer), Ramanathapuram and others (W.P(MD)No.18530 of 2018, dated 29.08.2018)*

(iv) *A.Francis Leo Gunaseelan Vs. The Special Joint Commissioner of Labour / Appellate Authority and others (W.P.No.4336 of 2019, dated 26.04.2019).*

4.The counter filed by the second respondent merely defends the impugned order on the ground that the appeal had been filed belatedly before the first respondent and the rejection of the same was correct in the light of Rule 36-C(2) of the Rules.

5.Heard learned counsel for the petitioner and learned Government Advocate for the respondents.

6.The provisions of Rule 36-C(2) of the Rules reads as follows:-

'Any person aggrieved by any order made by the District Collector in exercise of the powers conferred on him by these rules, except on appeals under sub-rule (1) may, within 30 days from the date of communication of the order to him, appeal to the Director of Geology and Mining against such order. In case, the aggrieved person is not satisfied with the decision of the Director of Geology and Mining, he may prefer a second appeal to the State Government within 30 days from the date of receipt of the order of the Director of Geology and Mining.'

7.As rightly pointed out by learned counsel for the petitioner, Rule 36-C(2) does not stipulate any cap on the power of the Appellate Authority to condone delay in filing of an appeal. In such circumstances, the provisions of Section 5 of the Limitation Act, 1963, which provide that any appeal or application, other than an application under any of the provisions of Section XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that there was sufficient cause for not preferring the appeal or making the application within such period.

8.In *A.Aruljothi vs. The Deputy Commissioner of Labour, Salem and others* [Laws(MAD)2002-6-87, dated 28.06.2002], this Court has, upon a consideration of the provisions of Section 29(2) of the Limitation Act, held that the provisions of Section 5 of the Limitation Act would apply in cases where there was no cap / exclusion provided under the local law in relation to the computation of limitation. At paragraph 8, it is stated as follows:

'8.I have already referred to the fact that



there is no provision either in the Act or in the Rules for condonation of delay in filing an appeal after the period of 60 days as provided under sub-rule (1) of Rule 5-A. Likewise, I have also stated that there is no specific exclusion of Section 5 of the Limitation Act either in the Act or Rules. Accordingly, in view of sub-Section (2) of the Section 29 of the Limitation Act, I hold that Section 5 of the Limitation Act is applicable in respect of appeals filed before the Deputy Commissioner of Labour, after the prescribed period of 60 days. Undoubtedly, the aggrieved person who intends to file an appeal has to show sufficient cause for not filing the appeal within the time prescribed. Accordingly, I am of the view that inasmuch as Rule 5-A of the Rules or any other provisions in the said Rules or in the Act do not expressly or impliedly apply to Section 5 of the Limitation Act, the first respondent ought to have entertained and considered the application of the petitioner for condonation of delay in filing the appeal. I am satisfied that the impugned order is liable to be vitiated by failure on the part of the first respondent to exercise his power and jurisdiction vested with him. As observed by the Supreme Court, insofar as the special law do not expressly exclude the application of the Limitation Act, the application for delay of condonation can be entertained by the appropriate authority under the special law.'

The matter was thereafter remanded to the file of the Appellate Authority for considering the application of the applicant therein, on merits, on the aspect of condonation of delay.

9. In the present case, however, the petitioner has stated in affidavit that she was under treatment for breast cancer before the Kovai Medical Center and Hospital Limited and also produced sufficient medical records before me to establish the submission.

10. The impugned order passed by the second respondent on 06.10.2017, has been received by the petitioner on 10.10.2017. An appeal challenging the same has to be filed within 30 days from receipt thereof, but has been filed by the petitioner on 26.04.2018 with a delay of 146 days.

11. In the light of the reasons expressed by the petitioner that are not controverted or denied by the respondents, the delay of 146 days in filing of appeal stands condoned. The appeal is restored to the first respondent, who shall hear the petitioner and pass orders on merits.



12.This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

To

1.The Director of Zoology and Mining,
Guindy, Chennai - 32.

2.The District Collector,
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Dindigul District.

3.The Revenue Divisional Officer,
Palani Revenue Division,
Dindigul District.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-75353[F] dated 16/07/2019)

+1 CC to M/s.SPL GP (SR-75404[F] dated 16/07/2019)

W.P (MD) No.13460 of 2018
15.07.2019

KK/SAR/13.08.2019/5P-6C/