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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1388 of 2020

Maninder Singh Garcha S/o Harvans Singh Garcha, Aged About 48 Years
R/o Sahdev Nagar, Ward No. 19, District Rajnandgaon, Chhattisgarh.

---Petitioner(s)

Versus

- 1.** Union of India Through Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Aliganj, Jorbagh Road, New Delhi 110003.
- 2.** State Level Environment Impact Assessment Authority (SEIAA) Chhattisgarh Through Chairman, Secretariat, Paryavas Bhawan, North Block, Sector 19, Naya Raipur - 490099, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Priyank Rathi, Advocate.
For Respondent 1	:	Shri Himanshu Pandey, Advocate on behalf of Shri B.Gopa Kumar, Asst. Solicitor General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30.06.2020

- 1.** The challenge in the present writ petition is to the Environmental Clearance Certificate granted by the District Environment Impact Assessment Authority dated 06.09.2016 (Annexure P/1).
- 2.** The brief facts relevant for the disposal of the writ petition in the present case is that, the petitioner is a business entity carrying on the business in mining activities. The petitioner had obtained lease of a property situated in District Rajnandgaon for mining activities. Now as per the prevalent environmental laws the petitioner before commencement of its business was also required to have an environmental clearance certificate issued from the District Environment Impact Assessment Authority. The petitioner applied for the same and got certificate Annexure P/1 issued on 06.09.2016. While granting the said certificate, the validity of the environmental clearance in the said certificate was up till 31.03.2020. That

on account of the lockdown in the State the validity was extended uptill 30-06-2020.

- 3.** Based upon the said clearance certificate the petitioner started their business and continued the same without any objection whatsoever till the filing of the present writ petition on 27.06.2020 i.e. just three days before the last date of the expiry of extended validity of the clearance certificate. The writ petition now has been filed challenging the period for which the validity has been given i.e. for three years. This according to the petitioner, is illegal, arbitrary and violative of the rules, regulations and the guidelines governing the field. According to the petitioner, the validity of the environmental clearance should have been for life of a project or for a maximum period of 30 years. Therefore, granting of the validity for a period of three years i.e. up till 31.03.2020 deserves to be set aside and have prayed for an appropriate relief by way of a direction to the State Level Environment Impact Assessment Authority to issue a fresh environment clearance on the same terms and conditions that were granted vide Annexure P/1 for a period up till 2039 i.e. for a period of 19 years in one go.
- 4.** At the outset, this court is of the opinion that the petition suffers from delay laches. Taking into consideration the relevant dates which are revealed in the preceding paragraphs it is evident that the petitioner establishment got an environmental clearance as early as on 06.09.2016. The said clearance was granted with a validity only up till 31.03.2020. At that point of time the conditions to the clearance certificate was acceptable to the petitioner. Accepting the same the petitioner started their business activities and continued to operate the same till 27.06.2020 when for the

first time they have approached this court challenging the validity of the period for which clearance have been granted.

5. This, according to this court, is where it suffers from delay and laches for the simple reason that, the moment the petitioner got the clearance certificate issued in his favour and from the moment they started the business activities, they were aware of the fact that the validity of the said certificate is only up till 31.03.2020. Being in the business, they were well aware of the consequence that would arise beyond 31.03.2020.
6. That even though the petitioners started the business in 2016 itself, they had never raised any objection or moved any application/representation before the competent authority in respect of the validity of the environment clearance certificate being issued only for a short period.
7. Perusal of the pleadings of the writ petition does not show that the petitioners have even approached the authorities concerned for grant of renewal of the clearance certificate or for issuance of a fresh environmental clearance certificate. No endeavor whatsoever has been made on the part of the petitioner for the same. This again, in the opinion of this court, is a deliberate and conscious decision of the petitioner for not approaching the authorities for either issuance of a fresh certificate or for renewal of the earlier certificate. In view of the same, this court finds it difficult to entertain the writ petition at this belated stage.
8. It is pertinent to note that since the expiry of the validity period was up till 31.03.2020 and because of the lock down situation the validity of the clearance certificate was extended up till 30.06.2020 by the Government, even during this period the petitioner has not taken any steps for grant of a new certificate or for the renew of the earlier one.

9. Another fact on which this court is reluctant to entertain the writ petition is the fact that there is an alternative statutory remedy available to the petitioner. The impugned order Annexure P/1 dated 06.09.2016 had very specifically in Clause-32 expressed that against the order granting environmental clearance, the aggrieved person could prefer an appeal under Section 16 of the National Green Tribunal Act, 2010 to the National Green Tribunal. This remedy also the petitioner has not availed all along during which the petitioners were in possession of the clearance certificate and they were carrying on their business with the same.
10. The counsel for the petitioner refers to the judgment of the Supreme Court in case of **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & Ors.**, 1998(8) SCC-1 emphasizing that availability of an alternative remedy does not debar the petitioner from seeking a judicial review of an illegal order in exercise of the writ jurisdiction conferred upon the High Court under Article 226 of the Constitution of India if the order is per-se illegal. This argument of the petitioner also for the same reasons enumerated in the preceding paragraphs is not sustainable. The petitioner even if he intended to avail the writ remedy, they ought to have approached this court immediately on the issuance of the clearance certificate on 06.09.2016 or within a reasonable period of time. In the present case, not only have the petitioners failed to approach this court or before the Tribunal, on the contrary, they have wholeheartedly and with wide open eyes knowing fully the conditions put forth in the clearance certificate and its consequences started their business activity and continued to carry on with the business till date.

- 11.** For all the aforesaid reasons, this court is of the opinion that the writ petition is not sustainable. The same deserves to be and is accordingly rejected.
- 12.** However, if the petitioner even if now approaches the authorities for grant of an appropriate fresh clearance certificate, the authorities are expected to take appropriate steps in deciding the same at the earliest.

Sd/-
(P. Sam Koshy)
Judge

inder