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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

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THE HONOURABLE MR.JUSTICE R. MAHADEVAN

W.P.Nos.12765 and 12766 of 2017 &
W.P.No.9018 of 2021
and

WMP.Nos.13618, 13619, 13620 and 13621 of 2017
and 9554 of 2021

W.P.Nos.12765 and 12766 of 2017

M/s. Karunai Granites Private Ltd.,
represented by its Director K.Karunakaran,
3/55, Karunai Nagar,
Jagadevipalayam Village & Post,
Krishnagiri Taluk & District 635 023.

.. Petitioner in all the WPs

Vs.

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Deputy Director of Geology & Mining,
Krishnagiri District, Krishnagiri.

3.State Level Environmental Impact Assessment
Authority (SEIAA), Tamil Nadu,
Panagal Maligai, Saidapet,
Chennai

.. Respondents in
WP.Nos.12765 and 12766 of 2017

1. Ministry of Environment and Forest and
Climate Change,
Paryavaran Bhavan,
New Delhi -3.

2. The District Collector,
Krishnagiri District,
Krishnagiri.

3. The Deputy Director of Geology & Mining,
Krishnagiri District, Krishnagiri.



4. State Level Environmental Impact Assessment,
Authority (SEIAA), Tamil Nadu,
Panagal Maligai, Saidapet, Chennai.

.. Respondents
in WP.No.9018 of 2021

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WP.Nos.12765 and 12766 of 2017: Writ Petitions filed under Section 226 of Constitution of India praying for issuance of Writ of Mandamus by directing the respondents herein to process the applications of the petitioner dated 13.05.2016 acknowledged by the 3rd respondent vide Lr.Nos.SEIAA-TN/F.No.5292/2016 and SEIAA-TN/E.No.5293/2016, dated 13.05.2016 for grant of environmental clearance in respect of the petitioner's granite quarries comprised in S.F.Nos.299/2 (p), 301/1 (p) measuring to an extent of 3.15.5 hectares and in S.F.Nos.294/4, 295/2A, 295/2B, 295/2C and 298/2, 298/1C2, 301/1(P), 301/2 and 301/3A at Jagadevipalayam Village of Krishnagiri Taluk & District within a time frame as may be fixed by this Court.

WP.No.9018 of 2021: Writ Petition filed under Section 226 of Constitution of India praying for issuance of Writ of Mandamus by directing the 2nd and 3rd respondents to grant permit for quarry operations and transport permits to the petitioner to the transport quarried granite blocks from the petitioner's granite quarry comprised in S.F.No. 299/2 part and 301/1 part and 301/3A measuring 3.15 hectares at Jagadevipalayam Village of Krishnagiri Taluk and District as per the clarifications dated 01.11.2018 issued by SEIAA, Andhra Pradesh vide Letter No.6/SEIAA/AP/EC/Mines/2015 based on the notification issued by the 1st respondent herein.

For Petitioner : Mr.M.Santhanaraman
For Respondents : Mr. Stalin Abhimanyu, Govt. Advocate
for R1 and R2 in WP Nos.12765 and 12766 of 2017 and
for R2 and R3 in WP.No.9018 of 2021
Mr.K.Srinivasamurthy, SPCGS for R3 in WP Nos.12765 and 12766 of 2017 and
for R4 in WP.No.9018 of 2021
Mr.S.N.Parthasarathy CGSC for R1 in WP 9018 of 2021

COMMON ORDER

Heard all the parties and perused the materials available on record.

2.The prayer made in WP.Nos.12765 and 12766 of 2017 is to issue a mandamus directing the respondents to process the applications of the petitioner dated 13.05.2016 for grant of environmental clearance in respect of the petitioner's granite



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quarries comprised in S.F.No.299/2 (p), 301/1 (p) measuring to an extent of 3.15.5 Hectares and S.F.Nos.294/4, 295/2A, 295/2B, 295/2C and 298/2, 298/1C2, 301/1(P), 301/2 and 301/3A measuring to an extent of 11.59.0 Hectares at Jagadevipalayam Village, Krishnagiri Taluk & District within a time frame to be fixed by this Court.

2.1 The prayer made in WP.No.9018 of 2021 is to issue a writ of mandamus directing the respondents 2 and 3 to grant permit for quarry operations and transport permits to the petitioner to transport quarried granite blocks from the quarries comprised in S.F.Nos.299/2 part and 301/1 part and 301/3A at Jagadevipalayam Village, Krishnagiri Taluk and District as per the clarification dated 01.11.2018 issued by SEIAA, Andhra Pradesh vide Letter No.6/SEIAA/AP/EC/Mines/2015, based on the notification issued by the first respondent.

3. According to the petitioner, they are carrying on the business of evacuating granite blocks in the lands owned by them in Krishnagiri District. In respect of the subject lands situated at Jagadevipalayam village of Krishnagiri Taluk, they obtained necessary permissions from the Government for granite quarrying, which were also approved by the Commissioner of Geology and Mining, vide letter dated 22.09.1994 and 24.08.2004. Thereafter, pursuant to the orders of this Court in WP.Nos.22670 of 2007 and 3034 & 3035 of 2010, the petitioner has been continuing the quarry operation by paying necessary seigniorage fee. While so, they received a letter dated 02.01.2017 stating that all the existing quarries should have obtained environmental clearance for continuing their operation and that, as per the direction of the National Green Tribunal, Principal Bench, the quarry operation without permit shall not be continued. In view of the same, the petitioner made two applications seeking environmental clearance on 13.05.2016, which were not considered till date. Hence, the petitioner has preferred WP.Nos.12765 and 12766 of 2017 for the aforesaid relief.

3.1 During the pendency of the aforesaid writ petitions, the petitioner made representation dated 03.09.2020 requesting the respondents 2 and 3 in WP.No.9018 of 2021 to issue permits for transporting the quarried granite blocks, in the lands in S.F.Nos.299/2 part and 301/1 part, at Jagadevipalayam village of Krishnagiri Taluk, in the light of the clarification issued by the State Level Environment Assessment Authority (SLEAA), Andhra Pradesh, dated 01.11.2018 to the effect that the lease of mining minerals which have been operating before 14.09.2006, did not require environmental clearance under EIA notification 1994 and the same would continue to operate without environmental

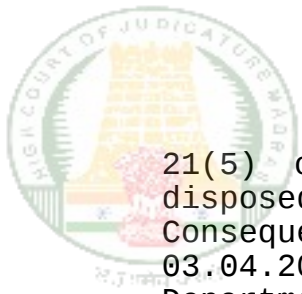


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clearance till the mining lease falls due for renewal, if there is no increase in lease area and / or there is no enhancement of production. However, the said representation was not considered, till date. Therefore, WP.No.9018 of 2021.

4. Upon notice, the District Collector, Krishnagiri, filed a detailed counter affidavit denying the averments made by the petitioner. It is inter alia stated therein that based on the order of the Supreme Court dated 27.02.2012 in IA.Nos.12-13 of 2011 in SLP(C)Nos.19628 - 19629 in Deepak Kumar etc. v. State of Haryana and others, the Government of Tamil Nadu have amended the Tamil Nadu Minor Concession Rules, 1959 vide G.O.Ms.No.79, Industries (MMC1) Department dated 06.04.2015 by introduction of Rules 41 and 42 and that, the mining plan and environment clearance for the quarry lease in respect of minor minerals irrespective of their extent and for the existing leases, have also been made mandatory. Further, the Principal Bench of National Green Tribunal, New Delhi, in the order dated 04.05.2016 in O.A.No.34 of 2016 in Naresh Zargar v. State of Madhya Pradesh and others, have directed that all the mines owners, which of them have not submitted the applications as on 31st March 2016 to State Level Environment Impact Assessment Authority, District Environment Impact Assessment Authority and District Level Expert Appraisal Committee, shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever. That apart, the same National Green Tribunal in the order dated 18.04.2017 in MA.No.260 of 2017 in O.A.No.123 of 2017 have directed the state Government to expedite the compliance of the law as expeditiously as possible and to ensure that no mining activity is permitted to be carried on without obtaining prior environment clearance. Thus, according to this respondent, the petitioner has been operating their quarries on the strength of the court orders and hence, they are liable to obtain environment clearance from the State Level Environment Impact Assessment Authority, Tamil Nadu.

4.1 It is stated in the counter affidavit filed by the SEIAA that the EIA Notification, 2006 mandates prior environmental clearance for new projects or activities including expansion or modernisation of existing projects listed in its schedule. It further proceeds to state that since the petitioner was operating the existing granite quarries continuously without obtaining environment clearance after 15.01.2016, it shall be considered as violation case and therefore, the SEIAA-TN has addressed a letter dated 11.05.2017 to the petitioner that his applications dated 13.05.2016 seeking environment clearance could not be processed and the same were closed; and that, the petitioner was directed to submit the said proposal to MoEF&CC following the guidelines.



21(5) of the MMDR Act, if the extracted mineral has been disposed of [Common Cause v. Union of India, (2017) 9 SCC 499]. Consequently, the MoEF&CC issued a communication dated 03.04.2017 to the Principal Secretary to Government, Industries Department, Chennai that as per the notification S.O.141 (E) dated 15.01.2016, all the mining leases operating in the country are required to obtain environmental clearance. With effect from 15.01.2016, no mining lease shall operate without prior EC and they should stop their mining activity and apply for EC. The said communication dated 03.04.2017 was sustained by the National Green Tribunal (Southern Zone), Chennai, in O.A.No.136 of 2017 dated 30.06.2020. However, it was clarified by NGT that those persons, who have already filed application for environmental clearance as on 31.03.2016, cannot be treated as violators.

7.It is to be pointed out that in WP.No.26808 of 2019 etc. batch, questioning the memos issued by the District Collector(s), calling upon the petitioners therein to pay 100% cost of the mineral lifted on the ground that they have operated the mines without prior Environmental Clearance from the Ministry of Environment and Forest, Government of India, this Court, after detailed analysis and also following the decisions of the Supreme Court as referred to in the preceding paragraph, has categorically held that the lessees must pay compensation, if they have been mining minor minerals without environmental clearance. Paragraphs 230, 231, 232 and 233 of the said order are profitably, extracted hereinbelow:

"230.The learned counsels for the petitioners also questioned the impugned notices on the additional ground that the demand for payment of 100% cost of the mineral levied was for the period commencing from 15.01.2016. It was stated that this date termed as 'Magic Date' could not be fixed as the commencement date. The date ie., 15.01.2016 is referable to the notification of the Ministry of Environment, Forest and Climate Change, wherein, reference was drawn to the mandate directed in Deepak Kumar case (referred supra) that extension of lease or application of lease for mining minor minerals even in areas of less than 5 hectares, Environment Clearance is required. It was mentioned that amendments were made to the Environment Impact Assessment Notification, 2006 issued vide number S.O.1533(E), dated 14.09.2006, in exercise of the powers conferred by Sub-Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 r/w Clause (d) of Sub-Rule (3) of Rule (5) of the Environment (Protection) Rules, 1986.



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231. In the notification, it had been stated that a draft notification for making certain amendments was published under Sub-Rule (3) of Rule (5) of the Environment (Protection) Rules, 1986, vide number S.O.2588(E), dated 22.09.2015, inviting objections and suggestions from all persons likely to be affected, within a period of 60 days from the date of publication on which copies of Gazette containing the said notification were made available to the public. If the petitioners were really interested, then they should have raised their objections at that time, when objections and suggestions were invited by the Ministry of Environment, Forest and Climate Change. To repeat, the petitioners cannot claim ignorance or innocence. They are in the business of mining minerals. They should be aware of the various notifications issued and the amendments carried out. They must be prepared to give their suggestions and objections. Having not done so, they cannot now cry foul of the stipulations imposed upon them.

232. In the notification, an amendment had been included to incorporate the procedure for application for prior Environment Clearance (EC). In the Appendix VII, the qualification and the terms for the experts in District Environmental Impact Assessment Authority and the District Level Expert Appraisal Committee had also been given. A proforma of the application for mining of minor minerals under category 'B2' for less than and equal to 5 hectares was also given. It must be mentioned that category 'B2' pertains to mining of minor minerals of lease area of less than or equal to 5 hectares. The notification is extremely detailed.

233. In Appendix IX, procedure for Environmental Clearance for mining of minor minerals including Cluster had been given. The burden had been shifted to the petitioners on 15.01.2016 itself to apply for Environment Clearance in the prescribed manner. Their claim that they can wait initially for a period of 180 days and finally for a period of 630 days, only shows that their intention was never to obtain Environment Clearance but to make profit by mining the minerals without any authority, illegally and to the detriment of the environment, without any care for the ecological impact. Such mining activities have to be prevented. If done, the lessees must, as rightly called upon by the District Collectors, pay compensation. The Hon'ble Supreme Court had directed that 100% compensation is leviable and payable. That



direction has to be complied with. No question asked. No assurance given."

8. Such being the factual and legal position, this Court is of the view that no mandamus can be straight away issued to the respondent authorities, at the instance of the petitioner, since the applications dated 13.05.2016 filed by them seeking Environmental Clearance, were already closed. However, liberty is granted to the petitioner to approach the authority concerned for appropriate relief.

9. Accordingly, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

msr

To

1. Ministry of Environment and Forest and
Climate Change,
Paryavaran Bhavan,
New Delhi -3.
2. The District Collector,
Krishnagiri District,
Krishnagiri.
3. The Deputy Director of Geology & Mining,
Krishnagiri District, Krishnagiri.
4. State Level Environmental Impact Assessment,
Authority (SEIAA), Tamil Nadu,
Panagal Maligai, Saidapet, Chennai.

+1CC to M/s., Advocate, SR.No. 29081

+1CC to The Government Pleader, SR.No. 29391 & 29399

W.P.Nos.12765 and 12766 of 2017 &
W.P.No.9018 of 2021

SSD(CO)

B.VC (25/08/2021)