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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.19402 of 2021
and
W.M.P.(MD)No.16136 of 2021

C.Jegadeesan

.. Petitioner

Vs.

1.State Level Environment Impact Assessment Authority - Tamil Nadu,
Rep. by its Member Secretary,
3rd Floor, Panagal Maligai,
No. 1, Jeenis Road,
Saidapet, Chennai - 600 015.

2.State Level Expert Appraisal Committee (SEAC)- Tamil Nadu,
Rep. by its Member Secretary,
3rd Floor, Panagal Maligai,
No. 1, Jeenis Road,
Saidapet, Chennai - 600 015.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the application of the petitioner for EC dated 10.09.2019 in Ref(SIA/TN/MIN/42577/2019) - File No.7159/2019 for grant of lease for quarrying gravel, rough stones and jelly for the patta land bearing S.F. Nos.1040/5, 1041/1, 1041/2, 1041/3 & 1041/4 admeasuring 1.46.5 Hectares in Sevalkulam Village, Tiruvenkadam Taluk, Tenkasi District.

For Petitioner

: Mr.V.Sanjeevi

For Respondents

: Mr.N.Dilip Kumar
Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Mandamus, directing the respondents to consider the application of the petitioner for EC, dated 10.09.2019 in Ref(SIA/TN/MIN/42577/2019) - File No.7159/2019 for grant of lease for quarrying gravel, rough stones and jelly for the patta land bearing S.F.Nos.1040/5, 1041/1, 1041/2,

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1041/3 & 1041/4 admeasuring 1.46.5 Hectares in Sevalkulam Village, Tiruvenkadam Taluk, Tenkasi District.

2.The petitioner is having lands at various Survey numbers, viz., Survey Nos.1040/5, 1041/1, 1041/2, 1041/3 & 1041/4 measuring 1.46.5 Hectares in Sevalkulam Village, Tiruvenkadam Taluk, Tenkasi District. In order to have a gravel, rough stones and jelly quarrying in the said patta land belongs to the petitioner, the petitioner obtained lease-cum -permission from the District Collector vide his proceedings, dated 14.12.2011.

3.A lease agreement has been executed by the District Collector in favour of the petitioner on 22.04.2012 for a period of five years commencing from 22.04.2012, which ends on 21.04.2017. Accordingly, the petitioner running the quarry unit during the lease period.

4.When that being so, subsequent to the development of march of law, it has become mandatory that all quarry operators should get an Environment Clearance from the State Level Environment Impact Assessment Authority (SEIAA), that is, the first respondent herein and without such Environment Clearance, quarry operations shall not be permitted.

5.In this context, the Tamil Nadu Minor Mineral Concession Rules, 1959 is having a Rule, that is, Rule 42 under the heading Submission of Environment Clearance for the Grant of quarry lease for minor minerals including granite.

6. Sub Rule (iii) of Rule 42 (1) makes it clear that, within a period of 270 days, the existing quarrying operators must get the Environment Clearance from the State Level Environment Impact Assessment Authority (In short 'SEIAA').

7.The said period of 270 days had subsequently been extended at various point of time by issuing necessary Government Orders and ultimately, the period within which the existing quarry operator must get the Environment Clearance and produce to the Mining Department to continue the operation has been extended to 630 days. In order to appreciate the same, the relevant Rule, namely, the Rule 42(iii) is extracted hereunder:

"42.(iii) Where quarrying operations for Minor Minerals including granites have been undertaken before the commencement of these rules without environment clearance, such holder of minor mineral including granite leases shall submit the environment clearance within six hundred and thirty days from the date of commencement of these rules."



8. With these legal background, it is a case projected by the petitioner that, though the petitioner was having the quarry right as given by the District Collector, where there has been a lease deed executed between the District Collector and the petitioner, dated 22.04.2012 under which for five years period from 22.04.2012 upto 21.04.2017 the petitioner can quarry.

9. However, in view of the afore-stated legal position, where it become mandatory on the part of the quarrying operator to get the Environment Clearance from SEIAA and the extended period for getting such Environment Clearance was only 630 days from the notification, which was issued sometime in 2015, the petitioner infact on the expiry of 630 days, exactly, that is, on 10.01.2017 stopped the quarrying operation.

10. Thereafter, the petitioner made application to the respondents herein, especially, the first respondent, on 10.09.2019 to consider his request for grant of Environment Clearance for the purpose of continuing the quarry operation or to get further leasehold right from the Mining Department/District Collector concerned.

11. The said application submitted by the petitioner, dated 10.09.2019, though had been considered by the first respondent, they have not granted the same, but they keep it pending on the alleged reason that, as against some penalty imposed against the petitioner by the Mining Department, dated 20.08.2019, the petitioner had filed a writ petition before this Court in W.P. (MD) No. 22237 of 2019, where, though an order of interim stay had been obtained, the said writ petition is still pending before this Court for consideration. Unless and until the writ petition is decided in one way or other, the respondents would not proceed further on the application of the petitioner, dated 10.09.2019 for grant of Environment Clearance.

12. In view of the said stand taken by the respondents in considering the application of the petitioner for grant of Environment Clearance and the same has been kept pending from the year 2019, having no other option, the petitioner has filed the present writ petition with the aforesaid prayer seeking for a Mandamus.

13. I have heard Mr. V. Sanjeevi, learned counsel appearing for the petitioner, who would submit that, by the communication, dated 31.10.2020, the respondent, that is, SEIAA, has given the reason that in view of the pendency of the writ petition in W.P. (MD) No. 22237 of 2019 filed by the petitioner before this Court, the application submitted by the petitioner for Environment Clearance appraisal would be considered only after the obtaining the judgment in the said case, as a reason for presently not considering the application of the petitioner for grant of Environment Clearance.



14.The said reason, according to the learned counsel for the petitioner, is untenable, because, first of all the order impugned in the said writ petition is the order of penalty imposed by the District Collector concerned, dated 20.08.2019, wherein the District Collector imposed the penalty stating that for the period between 15.01.2016 and 10.01.2017, the petitioner since continued the quarrying operation unmindful of the mandate that Environment Clearance should be obtained and produced without which the quarrying operation should not have been conducted and based on such decision, the penalty to the extent of Rs.12,23,196/- was imposed. The said order infact was challenged in the said writ petition, where an interim order of stay has been granted by this Court, by order, dated 21.10.2019 and the said writ petition still has been pending before this Court.

15.He would also submit that, insofar as the said issue as to whether the quarrying operation done by various quarry operators without producing the Environment Clearance during the extended period for production of the Environment Clearance upto 630 days would invite the imposition of any penalty was decided by this Court in a batch of writ petitions, by order, dated 19.08.2020 in the matter of **L.Ahmed Abdul Razack v. State of Tamil Nadu and others**, where the writ Court has taken the view that in view of the extended period, that kind of penalty could not be imposed.

16.It is also brought to the notice of this Court by the learned counsel appearing for the petitioner that, though a different view has been taken by the Principal Seat of this Court on the similar issue, now, the issue has been referred before a larger bench for consideration, therefore, the writ petition filed by the petitioner as stated supra, in the said W.P.(MD)No.22237 of 2019 is also to be decided by a larger bench and that is the reason why the said writ petition has been kept pending.

17.Therefore, pointing out these developments, the learned counsel for the petitioner would canvass the point that, first of all, the petitioner did not operate the quarry even for a single day beyond the 630 days period as provided under Rule 42(iii) of the Rules referred to above. Therefore, the very order passed by the District Collector, dated 20.08.2019, which was the subject matter in the writ petition referred to above itself would not stand in the legal scrutiny. Be that as it may, insofar as the present application submitted by the petitioner to get an Environment Clearance is concerned, independently on merits, such an application can very well be considered by the first respondent, who is empowered to consider the same, therefore, the pendency of the said writ petition, which is no way connected with the independent function of the first respondent to decide the application cannot

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reason, the first respondent cannot abdicate the powers and cannot keep the application pending endlessly for more than three years period, therefore, the learned counsel for the petitioner seeks indulgence of this Court to issue a suitable direction by way of Mandamus.

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18.Heard Mr.N.Dilipkumar, learned Standing Counsel appearing for the respondents, who, on instructions, would submit that, when the action on the part of the petitioner to run the quarry upto 10.01.2017 itself is the question, which is the subject matter in the earlier writ petition which is admittedly pending, therefore, one way or other, unless that writ petition is decided, it may not be justifiable on the part of the respondent to proceed with the present application of the petitioner to grant the Environment Clearance as it has become mandatory pursuant to the orders passed by the Hon'ble Supreme Court, that Environment Clearance must have been obtained by every quarry operator without which no quarrying operation shall be undertaken.

19.Since the said order of the Supreme Court was passed on 27.02.2012, merely because the notification has come subsequently by introducing the Rule concerned, the periodical extension of the time up to 630 days itself is a larger issue, that can be gone into by this Court in the pending writ petitions, which are now being referred to before the larger bench.

20.Therefore, unless and until that issue is decided one way or other, by an authoritative pronouncement by the larger bench, it may not be justifiable on the part of the respondent to take up the application filed for getting Environment Clearance by the petitioner to decide the same and for grant of Environment Clearance, as that would run contra to the stand already taken by the Environment Clearance authority. Therefore, uniformly in these kind of applications, the said stand has been taken by the Environment Clearance Authority and the petitioner's case is one among them, therefore, the said reason stated by the SEIAA for holding the application of the petitioner from 2019 is fully justifiable. Therefore, the learned Standing Counsel would seek indulgence of this Court to reject this Petition at this moment.

21.I have considered the said rival submissions made by the learned counsel for the parties and have perused the material placed before this Court.

22.No doubt, the petitioner is a lease-cum-licence holder to have quarry operation for the period of five years and the said five years period would be ending only on 21.04.2017. Therefore, till such time, there was no further impediment for the petitioner to run the quarrying operation.



23.However, in view of the decision taken by the Hon'ble Supreme as referred to above in the year 2012, subsequently, the State authorities have come forward to insert the Rule or to introduce the Rule by issuing a notification, whereby under Rule 42 as has been referred to above, it has become mandatory that every quarry operator should get an Environment Clearance from the respondent, that is, SEIAA without which they cannot operate the quarry.

24.However, the Rule making authorities with their wisdom extended the time to get such Environment Clearance and produce the same at various point of time from 180 days to 630 days.

25.Therefore, as per the latest extension, every existing quarry operator would be entitled to get the Environment Clearance and produce the same within 630 days, that means, upto 630 days from the notification, they can continue the quarrying operation without Environment Clearance, however, beyond 630 days only it become a violation of the Rule. This is what the exact import of Sub Rule (iii) of Rule 42(1) of the Rules.

26.Here in the case in hand, knowing well that the 630 days period comes to an end on 10.01.2017, the petitioner admittedly stopped the quarrying operation and this is evidence from the very order passed by the District Collector, dated 20.08.2019, where he has stated that, the petitioner operated the quarry only upto 10.01.2017. In order to appreciate the same, the relevant portion of the order, dated 20.08.2019 passed by the District Collector is extracted hereunder:

“3.எனவே தாங்கள் 15.01.2016 முதல் 10.01.2017 முடிய சுற்றுச் சூழல் இசைவு இன்றி குவாரிப்பணி மேற்கொண்டு குவாரியிலிருந்து எடுத்துச் சென்ற கனிமத்திற்கு உண்டான கனிமத் தொகை பின் வருமாறு கணக்கிடப்பட்டு கீழ்க் கண்ட அரசு தலைப்பில் செலுத்தி அசல் சலாணை இவ்வலுவலகத்தில் சமர்ப்பிக்குமாறு கேட்டுக் கொள்ளப்படுகிறது.

வ. எண் .	கால வரையறை	எடுத்துச் செல்லப்பட்ட கனிமத்தின் அளவு	கனிமத் தொகை (1 க.ம ³)	செலுத்த வேண்டிய கனிமத் தொகை
1.	15.01.2016 முதல் 31.03.2016	312	283	88295
2.	01.04.2016 முதல் 10.01.2017	3492	325	1134900
மொத்தம்		3804		1223196



4.மேற்படி கனிம தொகையான ரூ.12,23,196/- (ரூபாய் பன்னிரண்டு இலட்சத்து இருபத்து மூன்றாயிரத்து நூற்று தொண்ணூற்று ஆறு மட்டும்) கீழ்க் கண்ட அரசு தலைப்பில் உடன் செலுத்தி அதன் அசல் செல்லாணை இவ்வலுவலகத்தில் சமர்ப்பிக்குமாறு கேட்டுக் கொள்ளப்படுகிறது. தவறும் பட்சத்தில் 1959-ம் வருடத்திய தமிழ்நாடு சிறு கனிம சலுகை விதிகளின்படி உரிய மேல் நடவடிக்கை எடுக்கப்படும் எனவும் தெரிவிக்கப்படுகிறது.”

27. Therefore upto 10.01.2017, *prima facie* the petitioner is saved by the extended period of 630 days under Rule 42(1)(iii) of the Rules to produce the Environment Clearance. If at all the petitioner goes beyond the 630 days and continue to operate the quarry, certainly, that would be a violation of Rule 42 and in that case, such violation can be noticed by the respondents SEIAA also in considering their application for grant of Environment Clearance.

28. However, in the case of the petitioner is concerned *prima facie* this Court find that, he has not violated the 630 days period limitation to get the Environment Clearance and after making application, the petitioner has been waiting all along for these three years without having the quarrying operation. Therefore, this Court feel that, the said reasoning given by the respondent SEIAA for holding the application of the petitioner without taking any decision for grant of Environment Clearance may not be justifiable.

29. It was argued by the learned Standing Counsel appearing for the respondent that, whether rightly or wrongly, a decision has been taken at the meeting of SEAC on 12.02.2021, where, it was decided that, because of the pendency of the earlier writ petition in W.P. (MD)No.22237 of 2019 filed by the petitioner, where an interim order has been granted by this Court, the Environment Clearance appraisal would only be done after obtaining the judgment in the said case is pronounced.

30. On perusal of the said minutes of the said SEIAA, this Court feel that, the said reasoning cited by the SEIAA for deferring the decision to be taken on the application of the petitioner for grant of Environment Clearance also may not be justifiable, because, each and every application submitted by the quarry operators shall be independently considered and decided on merits and in accordance with law.

31. Nowhere in the Rule, it is stated that, if there is any earlier Court proceedings is pending, the applicant, who seeks for Environment Clearance may not be entitled to get the same or such



application can be deferred endlessly unless and until a decision is taken by the law Courts, where any earlier legal dispute or case filed by the applicant has been pending decision.

32.If that kind of view, as has been taken in the minutes recorded by the SEAC, dated 12.02.2021 is accepted, then there will be no solution in deciding any application filed before the SEIAA on the ground that, such applicant had already approached the Court of law in an earlier lease period for any dispute between the licensing authority and the quarry licensee.

33.Therefore, such an unsustainable reason given by the SEAC in its meeting, dated 12.02.2021 may not be the plausible reason for withholding the application of the petitioner, dated 10.09.2019.

34.If at all any decision is to be taken in the earlier writ petition, which is now pending along with the connected writ petitions for adjudication by a larger Bench, that can be decided on its own merits. However, that pendency of the earlier writ petition would not stand in the way for the respondent to independently decide the application of the petitioner for grant of Environment Clearance. Therefore, this Court feel that, the petitioner would be entitled to get a direction from this Court by way of mandamus to the respondents to consider the application of the petitioner, dated 10.09.2019 and decide the same on merits and in accordance with law for grant of Environment Clearance.

35.In that view of the matter, this Court feel that this writ petition can be disposed of by issuing the following order:

"that there shall be a direction to the respondents to consider the application of the petitioner, dated 10.09.2019 and pass orders thereon, on its own merits and in accordance with law. It is made clear that the pendency of the earlier writ petition filed by the petitioner in W.P.(MD)No.22237 of 2019 shall not stand in the way for the respondents to independently decide the said application of the petitioner for grant of Environment Clearance. The afore-stated exercise shall be undertaken by the respondents and final order shall be passed within a period of eight weeks from the date of receipt of a copy of this order."

36.With these direction, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Member Secretary,
State Level Environment Impact Assessment Authority - Tamil Nadu,
3rd Floor, Panagal Maligai,
No. 1, Jeenis Road,
Saidapet, Chennai - 600 015.
- 2.The Member Secretary,
State Level Expert Appraisal Committee (SEAC)- Tamil Nadu,
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W.P. (MD) No.19402 of 2021
02.11.2021

MGJ(14.02.2022) 9P 3C