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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1343 of 2022

SSS Enterprises
Rep. by its Partner P.Sankar,
No.9, Margaral Village,
Walajabath Taluk,
Kanchipuram - 631 603. ...Petitioner

Vs.

1. The District Collector,
   Kanchipuram District,
   Kanchipuram.

2. The District Collector,
   Thiruvannamalai District,
   Thiruvannamalai.

3. The District Collector,
   Thiruvallur District,
   Thiruvallur.

4. The District Collector,
   Chengalpet District,
   Chengalpet.

5. The District Collector,
   Chennai District,
   Chennai.

6. The Assistant Director of Geology and Mining,
   Office of the District Collector,
   Kanchipuram District.

7. The Assistant Director of Geology and Mining,
   Office of the District Collector,
   Thiruvannamalai District,

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8. The Assistant Director of Geology and Mining,
Office of the District Collector,
Thiruvallur District.

9. The Assistant Director of Geology and Mining,
Office of the District Collector,
Chengalpet District.

10. The Assistant Director of Geology and Mining,
Office of the District Collector,
Chennai District. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents not to insist the transit pass from the manufacturing unit to the point of end user to carry the processed minerals in the public transport.

For Petitioner : Mr.S.Mahveer Shivaji

For Respondents: Mr.B.Vijay, AGP

ORDER

The petitioner has filed this petition for a direction to the respondents not to insist on transit pass for the movement of processed minerals in public transport from the manufacturing unit to the point of end user.

2. The case of the petitioner is that the petitioner firm is running a production unit, which started functioning in the year 2019 and it is manufacturing and trading in M-sand, aggregates from jaw crusher, cone with VSI crusher etc., after getting all the necessary approvals from the appropriate department. Whileso, the respondents are continuously insisting upon transit permit for carrying the processed minerals/goods from the petitioner unit to the end consumer and they are preventing carrying of goods in the absence of a transit permit. Aggrieved by the action of the respondents in insisting transport permits, the petitioner made a representation dated 06.01.2022 before the respondents, and as no orders have been passed till date the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the Government of Tamil Nadu, in their letter No.515411/M2/B6-11, dated 26.05.88, Industries (M2) Department, has directed that the production of transit permit need not be

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insisted upon for the transport of processed minerals. He further submitted that, the Hon'ble High Court of Madras in W.P.No.28715 of 2007, vide order dated 30.08.2007 has held that the transportation of processed minerals, from crushing units to the purchaser's point, need not be necessarily be carried under any permit and it is sufficient that if necessary valid bills were carried along with the vehicle.

4. It is the further submission of the learned counsel that the mineral, once it is crushed, it no longer retains the character of a mineral and, therefore, insistence of transport permit for carrying the said end products to the consumers is wholly unsustainable. Hence, he prays that this Court may issue direction to the respondents to permit the petitioner firm to transport the processed minerals from the manufacturing unit to the end users without transit pass and permits.

5. Learned Additional Government Pleader appearing on behalf of the respondents submitted that, though it is true that prior to 2011, there was no law insisting for transit permit for transportation of the processed minerals, viz., M-sand or rough stones, however, in the year 2011, the State enacted rules under The Tamil Nadu Prevention of Illegal Mining, Transportation & Mineral Dealers Rules, 2011 as per which, the manufacturer of M-sand and other end products of rough stones necessarily have to obtain transit permit from the authorities for transport of goods from the manufacturing unit to the end consumers. Further, it is submitted that similar issue was raised in W.P.Nos.30131 to 30135 of 2012 wherein this Court categorically held that "The crushed stone in all form shall be taken as a mineral to advance the purpose of the legislation, namely Section 23-C of the Act, 1957 and the Prevention Rules, 2011 framed under the said provision. In fact, Rule 2(xiii) of the Prevention Rules, 2011 read with Rule 361 (ii-a) of the Concession Rules, 1959, also makes it clear that crushed stones including stone powder is a mineral".

6. It is the further submission of the learned Addl. Government Pleader, placing reliance on the aforesaid decision, that the mineral will not lose its character merely because the said mineral has been crushed into an end product as once a mineral, its always a mineral. It is the further submission of the learned Addl. Government Pleader that only to curb certain illegal activities, that were taking place in the transportation of the crushed mineral vis-a-vis the mineral quarried with respect to quantity, the aforesaid Rules have been enacted by the State and, therefore, permitting the petitioner to carry the

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crushed end product without transit permit would be nothing but making the rule otiose. The main reason for enactment of the Rules was to maintain certain checks and balances with regard to the mineral quarried vis-a-vis the crushing and transportation of the end products. It is further submitted that this Court, in W.P. (MD) No.18521 of 2019, vide order dated 23.03.2021 has appreciated the necessity for transit permit and categorically held that all the manufacturer of the crushing units necessarily have to obtain transit permit from the authority for transportation of the crushed minerals. Therefore, in view of the aforesaid position, learned Addl. Government Pleader prays this Court for dismissal of the present writ petition .

7. Heard the submissions advanced by the learned counsel on either side and perused the materials available on record.

8. Admittedly, the petitioner firm is a crusher unit and has obtained prior permission from all authorities for running the said unit. The grievance of the petitioner is only to the extent of the insistence of the respondents for producing transport permits when the crushed material is moved from the petitioner's unit to the end user. In this regard, it is the contention of the petitioner that once the mineral is crushed, it loses its character of a mineral and, therefore, the said Rules would not be applicable to the case of the petitioner. Further, it is the contention of the petitioner that even otherwise, the crushed material cannot be treated as a new mineral product, as there is no change in the fundamental nature of the mineral and, therefore, it is beyond the legislative competence of the State to frame the rule by virtue of its rule making power u/s 23-C of the Act, 1957.

9. It is not in dispute that quarried stones of different sizes are crushed and, thereafter, the crushed material is transported. The Rules have been framed only to regulate the illegal movement of crushed minerals. In this regard, the Rule making power of the State is put in issue.

10. However, the issue raised in the present petition is no longer res integra in view of the decision of this Court in Sri Venkataramanaswamy Blue Metals - Vs - The District Collector, Coimbatore District, (2014 SCC OnLine Mad 2796 :: 2014 (5) MLJ 397), as this Court has dealt threadbare with the term "mineral" in its widest amplitude. In the said decision the Rule making power of the State u/s 23-C of Act, 1957, was also considered wherein learned single Judge has held as under :-

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> "25.13. In all these cases that are under consideration, I categorically found that the mineral, namely, the quarried stone does not undergo a change in its fundamental nature to treat the same as a mineral product, when the same is crushed. Hence, I have no hesitation to reject the contention of the learned Senior Counsel for the petitioners that the Prevention Rules, 2011, is beyond the competency of the rule making power of the State Government under Section 23-C of the Act, 1957."

11. From the above, it is implicitly clear that the Prevention Rules, 2011 is within the rule making power of the State and, therefore, the Rules framed by the State Government for maintaining the illegal movement of the minerals cannot be said to be impermissible.

12. In the above backdrop, the core issue that requires consideration is whether the mineral, on being crushed, loses its character as a mineral and could be said to be a by-product of the mineral, thus rendering the said rule inapplicable to the case of the petitioner.

13. To appreciate the aforesaid contention, it is relevant to refer to the specific definition of "Minerals" and "stone" as provided in the said Prevention Rules and Concession Rules. Rule 2 (xiii) of Prevention Rules defines the word "Minerals" and Rule 36 (1)(ii-a) of the Concession Rules defines the word "stone" and for better appreciation, the said provisions are extracted hereunder :-

> "2(xiii) “Minerals” means all minerals and minor minerals except sand ;”

> “36(1)(ii-a) “stone” shall mean rough stones including khandas, boulders, size-reduced (broken or crushed) materials including metal jelly, ballasts, mill stones, hand chakais and building and road construction stones other than black, red, pink, grey, green, white or other coloured or multicoloured granites or any other rocks suitable for use as ornamental and decorative stones ;”

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14. A conjoint reading or Rule 2(xiii) of the Prevention Rules, 2011 read with Rule 36(1)(ii-a) of the Concession Rules, 1959, clearly reveals that the rough stones, on being crushed, takes the character of M-sand. Rule 2 (xiii) of the Prevention Rules clearly speaks that minerals would mean all minerals and minor minerals, except sand. Conscious of the nature of the material "sand" the State Government has not included "sand" within the definition of mineral. However, the crushing of the rough stones does not result in the production of sand, but it produces the lose component of the rough stones which is termed as M-sand. In effect, M-sand would mean that it is mineral sand and the letter 'M' notifies the said term mineral. Therefore, the resultant product of crushing of rough stones results in the production of M-sand, which is not a by-product, but the lose form of the mineral itself, viz., rough stones. That being the case, the insistence of transit pass for the movement of the crushed mineral cannot be said to be arbitrary or illegal, as the movement of the crushed commodity is, in fact, mineral.

15. There is no quarrel about the fact that the petitioner falls within the term "Mineral Dealer" as provided in 2 (xv) and Prevention Rules. Equally "transit pass" means a pass issued by the concerned Deputy Director for lawful transportation of any mineral by a carrier from the place of stockyard or from the lease area by the registree under these rules.

16. In the case on hand, the crushed product is being transported by means of a carrier from the place of stockyard/lease area by the petitioner. There is no quarrel with the fact that the petitioner is a dealer dealing in minerals as defined u/s 2 (xv) of the Prevention Rules, 2011.

17. The object of enactment of the Rule is only for the purpose of preventing illegal and excess movement the crushed mineral over and above the quarried quantity and only to keep a check on the said movement, transit pass is being insisted by invoking the provisions provided in the Rules. It is not the case of the petitioner that there is any levy, except for the insistence of a transit pass. When the respondents, on conscious appraisal, to prevent certain illegal acts, be not from the petitioner, but from any persons, who are in the business of transportation of minerals, insists on obtainment of transit pass, for transportation of minerals, the same cannot be said to be excessive or arbitrary, more so, when such a step is taken only to prevent illegal acts being perpetrated in the movement of valuable wealth and more so the said Rule has been framed within the ambit of the rule making power of the State.

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Merely because the petitioner faces difficulties in obtaining transit permit or that it causes delay in the transportation of the materials would be no ground to hold that the petitioner can subvert the rule and carry the materials without a transit pass.

18. It is to be borne in mind that mineral, which is quarried, is a wealth, which is in store in the environment for the good of all and only with a view to realise the best monetary value for the same and to avoid clandestine quarrying and movement of the said mineral in detriment to the exchequer, the State, through the enactment of the Prevention Rules, 2011, had thought it fit to insist on obtaining transit pass, for movement of the minerals. Once the Rules have been held to be within the Rule making power of the State, any rule enacted within the said rule making power, so long as it is not illegal and arbitrary cannot be held to be bad merely because the transporter finds difficulty in obtaining transport permits. Mineral, being a rich wealth, which nature has bestowed upon us, should be quarried and moved only within the threshold limits and only to have an eye on the quarrying and movement of the minerals, the Rule has been framed. Therefore, insistence of transit pass for the purpose of movement of minerals cannot be said to be bad and, therefore, the contention of the petitioner pales into insignificance.

19.For all the aforesaid reasons, the prayer sought for in the present writ petition cannot be acceded to and, accordingly, the writ petition deserves to be dismissed. Accordingly, this writ petition is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

Skt/GLN
To

1. The District Collector,
   Kanchipuram District, Kanchipuram.

2. The District Collector,
   Thiruvannamalai District,
   Thiruvannamalai.

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+1cc to the Government Pleader Sr.6885

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