



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.4536 of 2019

WMP.Nos.5121 of 2019 & 11453 of 2021

1. R.Manickam (Deceased)
2. M.Goapalsamy
(P2 substituted vide order dated
18.02.2022 in WMP No.11453 of 2021)

...Petitioners

Vs.

1.The District Collector,
Namakkal District, Namakkal.

2.The Revenue Divisional Officer,
Tiruchengode.

3.The Assistant Director,
Geology & Mining, Namakkal.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue aWrit of certiorarified mandamus calling for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.744/2013/B, dated 14.12.2018 to quash the same and further direct the 2nd respondent to acknowledge the payment of the fine amount of Rs.16,05,880/- as detailed in the petitioner's letter dated 04.09.2017.

For Petitioner : Mr.V.Prakash
Senior Advocate for
Mr.R.Gunalan

For Respondents : Mr.B.Vijay [R1 and R2]



O R D E R

WMP.No.11453 of 2021 seeking substitution of second petitioner is ordered.

2. Heard Mr.V.Prakash, learned Senior Counsel for Mr.R.Gunalan, learned for the petitioner and Mr.B.Vijay, learned counsel for the respondents. The challenge is to order dated 14.12.2018, under which interest of 24% in terms of Rule 36 of the Tamil Nadu Mines and Minerals Concession Rules, 1959 (in short 'Rules') has been levied. Admittedly, the original demand raised by order dated 23.02.2006 was for penalty of a sum of Rs.22,57,920/- only and there was no levy of interest contemplated.

3. The original order is silent as to the levy of interest and so is the notice issued prior to passing of order dated 23.02.2006, that also does not contain reference to the levy of interest or any proposal in that regard. The non-imposition of interest at the first instance is thus conscious and deliberate. The original demand was modified on 17.04.2007, reducing the demand to a sum of Rs.16,05,880/- that came to be confirmed in appeal, by order dated 08.01.2008.

4. Order of the appellate authority dated 08.01.2008 was challenged in W.P.No.9127 of 2008 and by order dated 29.03.2011 it had come to be set aside and the matter remanded to the file of the Authority for reconsideration afresh. As a result, an order imposing penalty came to be passed on 20.03.2007, that came to be confirmed in appeal on 31.12.2012 by the Commissioner of Geology and Mining. The aforesaid order was the subject matter of challenge in Writ Petition No.2408 of 2013 and by order dated 07.10.2015, the same was confirmed in full and the writ petition dismissed.

5. Liberty was given to the petitioner to file further appeal before the Government. The petitioner did not chose to challenge the order any further but remitted the entirety of the amount at that stage. It is in the aforesaid circumstances that order dated 14.12.2018 levying interest of an amount of Rs.33,82,448/- came to be passed, after a period of six years from order dated 31.12.2012 and only at the time when the petitioner sought issuance of a discharge certificate.



6. The impugned order is liable to be set aside as it is vitiated on several grounds. Firstly, none of the orders imposing penalty, either the original orders dated 15.03.2006, 20.03.2007 and 17.04.2007 nor appellate orders dated 08.01.2008 and 31.12.2012, make any reference to interest. The notices issued prior to finalization of the proceedings, both original and appellate, also do not contain such proposal.

7. It is a settled proposition in law that an order cannot traverse beyond the contour of the proposals contained in the show cause notice and must remain circumscribed by, and faithful to the same. Moreover, the impugned order has been passed after a period of twelve years from the date of the original order dated 15.03.2006 and six years from when the same came to be modified and upheld in appeal on 31.12.2012.

8. This would, by itself, vitiate the levy of interest in terms of Rule 36(b), as the levy is not within a reasonable time frame from the original and appellate demands. The authorities have had more than sufficient opportunity to propose the levy of interest, had they been so inclined. Having not done so, such a proposal cannot be mooted in 2018 after a period of 12 years from the date of passing of the original order. The impugned order cannot be sustained for the above reasons and this writ petition is allowed, and connected miscellaneous petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ska/sl
To

1. The District Collector,
Namakkal District,
Namakkal.

2. The Revenue Divisional Officer,
Tiruchengode.



3.The Assistant Director,
Geology & Mining, Namakkal.

+1cc to M/s.R.Gunaalan, Advocate Sr.11175
+1cc to the Government Pleader Sr.11590

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sj[col]

srg 01/06/2022