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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5930 of 2020
and
W.M.P.No.6948 of 2020

S.S.Jameeluddin

...Petitioner

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary to Government,
Industries Department,
Fort St George,
Chennai 600 009.
2. The Director of Geology and Mining,
Department of Geology and Mining,
Guindy, Chennai 600 032.
3. The District Collector,
Krishnagiri District,
Krishnagiri.

...Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to Call for the records relating to the impugned Memorandum of the 3rd respondent bearing Rc.No.1042/2018/C-49/Mines dated 19.02.2020 with reference to the petitioners granite quarry bearing S.F.No. 372 / 3A in Jagadevipalayam Village, Krishnagiri Taluk and District, quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Mr.B.Vijay
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to Call for the records relating to the impugned Memorandum of the 3rd respondent bearing Rc.No.1042/2018/C-49/Mines dated 19.02.2020 with reference to



the petitioners granite quarry bearing S.F.No. 372 / 3A in Jagadevipalayam Village, Krishnagiri Taluk and District, quash the same.

2.The case of the petitioner is that originally the Government of Tamil Nadu pursuant to the quarry lease application of the petitioner, granted quarry lease to him for quarrying gray granites from the patta lands over an extent of 1.25.0 hectare in S.F.NO.372/3A in Jagadevipalayam Village, Krishnagiri Taluk and District for a period of 20 years and upon execution of the Lease Deed, he commenced the quarry operation and started transporting the granite blocks after getting transport permits from the appropriate authority and thereafter, pursuant to the application dated 11.05.2016, the petitioner was granted permission for transfer of the said quarry lease in favour of the petitioner and at the time of granting lease and execution of the Lease Deed, there was no requirement for submission of environmental clearance. Thereafter, the Hon'ble Supreme Court of India in the case of Deepak Kumar & Ors. - Vs - State of Haryana (I.A. Nos.12-13/2011 - SLP (C) 729-731/2011, etc. - Dated - 27.02.2012) directed that the lease of minor mineral including the renewal of lease even for an area less than 5.00.0 hectares be granted by the States / Union Territories only after submission of environment clearance from the MoEF. For implementing the directions given by the Hon'ble Supreme Court, the 1st respondent by G.O.Ms.No.79, Industries (MMC-1) Department, dated 06.04.2015, added certain rules. As per Rule 42(iii), the then existing lessees were also directed to submit the environment clearance from the State Level Environment Impact Assessment Authority or from the Ministry of Environment and Forest and thereby, the original lessee - transferor of lease applied for environmental clearance (EC) to the said authority. Pursuant to the said application for EC, the said authority by order dated 10.08.2016 granted EC for quarrying of granite from the above said leasehold area and the said EC was obtained within the stipulated time granted by the Government. While being so, to his shock and surprise, though EC was applied on 11.05.2016 and was obtained on 10.08.2016, the 3rd respondent District Collector issued the impugned Memorandum dated 19.02.2020, demanding the cost of mineral as if the petitioner did not obtain the E.C. Aggrieved by the same, the present Writ Petition is filed.

3.The learned counsel appearing for the petitioner submitted that the 3rd respondent without considering the factum of obtaining EC on 10.08.2016, has levied penalty as if the petitioner quarried from 15.01.2016 to 10.01.2017 without EC, which exhibits total non application of mind on the part of the 3rd respondent. Further the period mentioned in the impugned Memorandum is virtually covered within the time of 630 days as



stipulated in Rule 42 (iii) for submission of EC, but the 3rd respondent without looking into the records, issued the impugned memorandum mechanically and hence prays for quashment of the same.

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4. The learned Additional Government Pleader appearing for the respondents on instructions fairly conceded that the impugned order is bereft of necessary details and there is an error on the face of the record. It is further submitted that the period for which penalty has been levied is between 15.1.2016 to 10.1.2017, but it is fairly conceded by the learned Addl. Government Pleader that the petitioner had obtained the EC on 10.08.2016, which requires to be taken into consideration in proper perspective. Therefore, it is submitted that this Court may set aside the impugned levy of penalty and remit the matter back to the respondents for considering that aspect of the matter with regard to the date of obtainment of EC by the petitioner.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. The 3rd respondent has issued the impugned Memorandum levying cost of mineral on the ground that the petitioner quarried and transported granite from 15.01.2016 to 10.01.2017 without E.C. However, while quoting the period for which levy of penalty is made, the respondents have mentioned that the period is between 15.1.16 and 10.01.2017. The period for which the quantum of levy has been arrived at is not clear from the impugned order.

7. Be that as it may. The fact remains that the petitioner was in possession of EC on 10.08.2016. It should also not be lost sight of that the decision in Deepak Kumar's case was rendered by the Hon'ble Supreme Court in the year 2012, but only after much delay, proceedings were issued by the MoEF on 3.4.17 fixing the date as 15.1.2016 on and from which quarries without EC were ordered not to function and levy of penalty was ordered to be made. It is borne out by record that the petitioner had applied for EC only on 11.05.2016 and obtained on 10.08.2016. As per Rule 42 (iii), the petitioner had applied for EC and also obtained the same within a period of 630 days. Though it is to be remembered that on and from the decision rendered by the Hon'ble Supreme Court in Deepak Kumar's case, persons, who were carrying on quarrying operations, were to obtain EC irrespective of the extent of land under quarry. However, subsequent to the decision in Deepak Kumar's case, sub-rule (iii) to Rule 42 was inserted and it had underwent amendment more than four times, finally resting at 630 days. The petitioner, to show his bona fides, had filed the application for EC on 11.05.2016, which is



much before the decision of the Hon'ble Supreme Court in Common Cause - Vs - Union of India (W.P. (Civil) No.114/2014 - Dated - 02.08.2017). True it is that immediately on the decision of the Hon'ble Supreme Court in Deepak Kumar's case, the petitioner ought to have taken steps to obtain EC, however, it is to be borne in mind that Rue 42 (iii) had granted the requisite time for the petitioner to file application for EC. It is not as if the petitioner merely filed the application for EC without taking any steps to obtain the same. The petitioner, in all earnestness, had submitted application within the period prescribed and had even obtained the EC within the period of 630 days provided us 42 (iii). From the above, it is evident that the petitioner has taken bona fide steps to obtain the EC as mandated by the Hon'ble Supreme Court in Deepak Kumar and Common Cause case and had obtained the EC within the period prescribed u/r 42 (iii). In such a backdrop, the bona fide act of the petitioner definitely deserves to be considered while arriving at a subjective satisfaction and in the said scenario, the respondents ought to have not not enforced the memorandum of MoEF on the petitioner by levying penalty, as the respondents have not holistically considered the whole issue, while issuing the impugned penalty proceedings.

8. In view of the fact that the above aspects that have not been properly taken into consideration by the respondents while levying penalty vide the impugned proceedings, this Court is inclined to set aside the impugned order.

9. For the reasons aforesaid this writ petition is allowed and the impugned order of the 3rd respondent bearing Na.Ka.No. A/ G and M / 297 / 2019 - 41 dated 06.07.2020, is set aside. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Industries Department,
Fort St George,
Chennai 600 009.



2. The Director of Geology and Mining,
Department of Geology and Mining,
Guindy, Chennai 600 032.

3. The District Collector,
Krishnagiri District,
Krishnagiri.

+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.7628

+1cc to the Government Pleader, S.R.No.7716

W.P.No.5930 of 2020
and
W.M.P.No.6948 of 2020

SPD(CO)
RGA(01/04/2022)