



W.P.No.17725 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR JUSTICE P.DHANABAL**

**W.P.No.17725 of 2023
and WMP.No.16820 of 2023**

The Executive Engineer,
Public Works Department,
Mining and Monitoring Division,
Water Resources Department,
Trichirapalli.

... Petitioner

Vs.

1.T.Saravanakumar

2.The Tamilnadu State Environment Impact
Assessment Authority,
Rep. by its Member Secretary,
3rd Floor, Panagal Maligai,
No.1 Jeenis Maliga, Saidapet,
Chennai-600 015.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records in respect of the order dated 31.05.2023 passed in Original Application No.77 of 2023 (SZ) by the National Green Tribunal, Southern Zone, Chennai and quash the same.



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For Petitioners : Mr.P.S.Raman, Senior Standing Counsel
assisted by
Mr.P.Muthu Kumar
State Government Pleader

For Respondents : Mr.A.Yogeshwaran for R1
Mr.AR.L.Sundaresan,
Assistant Solicitor General
for Mr.V.Chandrasekaran,
Senior Panel Counsel for R2

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

By consent of both sides, this Writ Petition is taken up for final disposal.

Challenge in this writ petition is to the order passed by the National Green Tribunal, Southern Zone, Chennai dated 31.05.2023 in Original Application No.77 of 2023 (SZ).

2. The case of the petitioner is that the petitioner, being a project proponent, had proposed to quarry river sand in Cauvery River and identified an area measuring 16.18 Ha comprised in S.F.No.643/1 (P) of Oruvanthoor Village, Namakkal Taluk, Namakkal District and sent a proposal seeking new quarry outlet to the District Collector, vide letter dated 17.12.2015. Pursuant to the above



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proposal, joint field inspection was conducted by various authorities concerned as to the technical visibility and feasibility of quarrying of sand and recommended for grant of permission for opening of new sand quarry in the subject area. Based on the recommendations and in compliance of the EIA Notification, 2006 and its amendments, the petitioner applied for Environmental Clearance for the subject quarry under B2 category, vide proposal dated 22.02.2016.

3. The above proposal was placed before the 79th SEAC (State Level Expert Appraisal Committee) meeting held on 08.08.2016, wherein the application and other supporting documents were appraised by the experts and recommended for grant of EC to SEIAA. The recommendation of SEAC was placed before the 503rd SEIAA meeting held on 10.08.2016 and granted EC for the subject quarry in favour of the petitioner with various general and specific conditions. In the said EC, it was permitted to use two poclains for excavation of sane. The relevant condition reads as follows:



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"5. Specific Conditions:

....

iv..... The Project Proponent is restricted to use judicious use of minimum number of poclains and not more than two poclains in the project site till the expiry of lease period or excavation of approved quantity whichever is earlier.

v. Loading and use of poclains, transport of sand shall not be entertained between 7.00 pm to 5.00 a.m.

vi. The project proponent is allowed to engage lorries or tippers to transport the sand."

4. In compliance of the conditions imposed in the EC dated 10.08.2016, the petitioner obtained necessary consents from the Tamil Nadu Pollution Control Board under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 on 05.01.2017. The District Collector, Namakkal vide proceedings dated 12.03.2017 has granted permission to operate the subject quarry. After the receipt of all the permissions / approvals / clearances from competent authorities and in compliance of the conditions imposed therein, the petitioner commenced its quarry operation on 16.06.2017.

5. In the meantime, based on Sand Mining Guidelines 2016, the Government of Tamil Nadu issued G.O.Ms.No.21 dated 02.06.2017, wherein it



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was directed that the Public Works Department may move SEIAA on case to case basis to permit more number of poclains for sand quarries. The petitioner had applied for modified proposal to SEIAA on 26.07.2017 and the same was placed before the 93rd SEAC meeting held on 12.08.2017 and the Committee directed the petitioner to submit comprehensive report, which was complied with by the petitioner and made a presentation on 12.08.2017. Subsequently, SEAC recommended the amendment with respect to usage of 4 poclans in the subject quarry. The above proposal was placed before the 241st SEIAA Meeting held on 09.10.2017 and the amended EC dated 10.08.2016 which is valid upto 09.08.2018.

6. In the meantime, one Mr.Varadharajan had approached this Court and filed a Public Interest Litigation in W.P.No.22433/2007 and an order of interim stay was granted vide order dated 06.11.2017 in WMP.No.23563 of 2017. The quarry operation was stopped by the petitioner immediately on 06.11.2017. This Court, vide order dated 13.11.2017, wherein suo motu impleaded SEIAA as a party, extended the interim order and directed SEAC as follows:



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"5..... In the light of the materials placed before this Court in the form of additional typed set of documents, the State Level Expert Appraisal Committee shall cause inspection of the quarry in question, after putting the petitioner on notice and find out as to whether the general conditions imposed in the Environmental Clearance dated 10.08.2016 issued by the State Level Environment Impact Assessment Authority are complied with or not and such a report shall be filed on or before 27.11.2017."

7. This Court, vide final order dated 06.07.2018 in W.P.No.22433/2017 and appointed an independent monitoring agency comprising of four members, to oversee the quarry operations and to report periodically.

8. As the validity period of EC as well as the mining lease was expired on 09.08.2018, the petitioner had applied to the District Collector, Namakkal and SEIAA for time extension of EC for a further period of two years to excavate the remaining quantity of sand. The District Collector, Namakkal, vide letter dated 18.12.2022 approved the lease extension for remaining quantity of sand in the



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subject quarry. Subsequently, on 01.02.2023, SEIAA extended the period of EC for 1 year and 4 months.

9. According to the petitioner, as per the Water and Air Acts, the petitioner had obtained necessary consents from the Tamil Nadu Pollution Control Board on 03.04.2023. The District Collector, Namakkal, vide proceedings dated 05.05.2023 granted permission to resume the quarry operations in the subject site. Subsequently, the petitioner resumed the quarry operations in the subject site on 10.05.2023 as per the conditions stipulated in the above approvals/ permissions, without any deviation.

10. In the meantime, one Mr.Saravanakumar / first respondent herein, who claimed to be the activist, had filed an Original Application in O.A.No.77 of 2023 (SZ) under Sections 14, 15 and 18(1) of the National Green Tribunal Act, 2010, before the National Green Tribunal, Southern Zone, Chennai, on 30.05.2023, despite being aware that the original EC was granted on 10.08.2016, amendment to the original EC was granted on 09.10.2017 and extension of EC was granted



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on 01.02.2023 and also necessary permissions were already obtained from the competent authorities for quarry and also sought for the following reliefs before the Tribunal:

"A. Direct the 2nd respondent to carry on mining manually at SF No.643/1 (Part) (Mile 77/2 + 150 to 77 / 5 + 150), Oruvandhoor Village, Namakkal District, pursuant to the Environmental Clearance dated 10.08.2016 extended by order dated 01.02.2023 issued by the 1st respondent, in compliance with OM dated 24.12.2023.

B. Direct the 1st respondent to strictly comply with OM dated 24.12.2013 in issuing environmental clearances for mining of minor minerals.

C. Issue such other orders as it deems fit in the interest of the case and render justice."

11. According to the petitioner, the prayer sought for in the OA is contrary to the conditions stipulated in the EC/Amendment/Extension already granted by the second respondent, who is the expert body, wherein the petitioner is permitted to use 4 nos. of Poclains in the subject quarry and the prayer in the OA is nothing but challenging the conditions in the EC, which can be challenged before the National Green Tribunal, under Section 16(h) of the NGT Act, 2010 within 30 days from the date of EC.



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12. The NGT, Southern Zone, Chennai vide interim order dated 31.05.2023, has observed that since a similar issue was questioned in Appeal No.80 of 2022, which is posted on 05.07.2023 and as this matter also involves the same issue, posted the original application on the same day and till such time the matter is taken up for hearing and the counter is filed by the respondents 1 and 2, the mining operations can go on, however, only manually and the operations with poclains is impermissible. Challenging the said interim order of the Tribunal, the petitioner has filed this instant writ petition.

13. Mr.P.S.Raman, learned Senior Standing Counsel for the petitioner contended that the above OA was filed and the pleadings were served through Whatsapp on the State's Counsel, after office hours on 30.05.2023 and the said OA was numbered as O.A.No.77 of 2023 and originally the matter was not listed on 31.05.2023, however, it came to the knowledge that upon mentioning to list the matter by the first respondent, on the same day on 31.05.2023, i.e., the last working day of NGT, the OA was taken up in the additional list at the end. It is



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further contended by the learned Senior Counsel that in the said OA, the first respondent did not implead the Ministry of Environment, Forest and Climate Change (MEF &CC) as a party, who is the authority issued various Guidelines, Office Memorandums, Notifications etc., for the protection of Environment and effective implementation. The learned Senior Counsel for the petitioner contended that when the matter was taken by the Tribunal, it was requested on behalf of the State to grant sufficient time to respond / file a detailed response by the State, since the matter was not listed originally, however the Tribunal did not consider the request and proceeded to pass the interim order and therefore, the impugned order has been passed without affording any opportunity to the petitioner to place all the materials and to place correct facts before the Tribunal by filing counter affidavit. The learned Senior Counsel for the petitioner submitted that without disclosing the aforesaid facts, the first respondent has approached the Tribunal/NGT and based on the materials produced, the Tribunal has granted interim orders, against which the petitioner is before this Court. The learned Senior Counsel for the petitioner further contended that based on the various consents/permissions/approvals obtained from all the authorities, the



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petitioner commenced the quarrying operations and all the subsequent orders / guidelines / amendments have not been placed before the Tribunal and sufficient opportunity ought to have been given by the Tribunal to place all the materials, before passing the interim orders and therefore, the impugned order of the NGT is liable to be set aside to the extent of restraining the petitioner Department from using poclains for quarrying operations.

14. Mr.AR.L.Sundaresan, learned Assistant Solicitor General appearing for the second respondent submits that Environmental Clearance was already given to the petitioner and therefore, they are permitted to use poclains for quarrying operations.

15. Mr.A.Yogeshwaran, learned counsel for the first respondent strongly objected that papers have been served to the petitioner Department in advance and opportunity was granted to the petitioner before the NGT and the learned Government Pleader appeared before the Tribunal on that day and therefore, the petitioner cannot contend that sufficient opportunity was not given to the petitioner. \



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16. Heard the rival submissions and perused the materials on record.

17. A perusal of the impugned order of the Tribunal would disclose that the tribunal has considered the original application by relying upon Office Memorandum dated 24.12.2013, classifying the subject site under B2 category and the mining should be done manually and the subsequent amendment to the memorandum is required to be placed before the Tribunal, for which necessary opportunity is to be afforded to the petitioner to place all the materials / consents/approvals / permissions to the Tribunal. It is the case of the petitioner that case papers were served to the petitioner only on 30.05.2023 and on the next day i.e, on the last working day of the Tribunal, the matter was taken up by way of additional list and effective opportunity was not afforded to the petitioner to represent their case. The Tribunal has failed to consider that approvals/permissions/clearances were obtained by the petitioner from various authorities under SEIAA and passed interim orders without affording sufficient opportunity to the petitioner and therefore, the impugned order of the NGT warrants interference on the ground of violation of principles of natural justice.



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18. According to the petitioner, even though permission is granted to carryout quarrying operations, the impugned order restraining them to operate the poclain is totally unsustainable. However, this Court is not inclined to go into the merits of the case. The learned Senior Counsel for the petitioner has stated that NGT may pass appropriate interim orders, after providing opportunity to the parties and after serving counter affidavit and reply affidavit to the parties concerned, NGT may pass appropriate orders on or before 04.07.2023, which reopens on 03.07.2023. The learned counsel for the first respondent also agreed to file reply affidavit on or before 02.07.2023 in response to the counter affidavit filed, if any within the aforesaid time and for reconsideration of the grant of interim orders afresh by NGT.

19. In view of the above factual scenario, submissions made and in the interest of justice, this Court is inclined to pass the following order:

(i) As agreed by both the parties, the Tribunal shall reconsider to pass appropriate interim orders afresh after affording sufficient opportunity to the parties, on or before 04.07.2023. Both the parties have agreed that they will extend their cooperation for passing of the



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interim orders by the NGT.

(ii) The learned Senior Counsel for the petitioner as well as the learned Additional Solicitor General for the second respondent TN-SEIAA agreed that they will serve the copy of the counter affidavit to the first respondent in advance on or before 28.06.2023.

(iii) Thereafter, the first respondent shall file his reply / response to the counter affidavit on or before 02.07.2023.

(iv) It is made clear that in the interregnum, if the petitioner is carrying on any quarry operations, they shall use 2 poclains in strict compliance of the conditions imposed under EC/approvals/permissions given by the authorities concerned, and if there is any violation of the conditions, it is open to the first respondent to place the same before the Tribunal.

(v) The petitioner department shall videograph the entire quarrying operations in the quarry site in question by using drone facility and the entire video recording shall be placed before the Tribunal.

(vi) The Tribunal shall decide the case on its own merits, without being influenced by any observations made by this Court.

(vii) The impugned order of the National Green Tribunal, Southern Zone, Chennai dated 31.05.2023 in O.A.No.77 of 2023 is modified to the above extent.



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20. The Writ Petition stands partly allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K., J.) (P.D.B., J.)
23.06.2023

Intex : Yes/No

Internet : Yes/No

Jvm

Note: Issue Order on 26.06.2023

To
The Member Secretary,
The Tamilnadu State Environment Impact
Assessment Authority,
3rd Floor, Panagal Maligai,
No.1 Jeenis Maliga, Saidapet,
Chennai-600 015.



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