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W.P.(MD)No.28084 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28084 of 2022

P.Yogamatha

... Petitioner

Vs.

- 1.The Secretary,
Ministry of Environment, Forest & Climate Change,
Government of India,
Indira Paryavaran Bhawan,
Jorbagh road,
New Delhi - 110 003.
- 2.The Secretary,
Environment, Forest & Climate Change Department,
Secretariat,
Fort St.George,
Chennai - 600 009.
- 3.The Secretary,
Industries, Investment Promotion & Commerce Department,
Secretariat,
Fort St.George,
Chennai - 600 009.
- 4.The Chairman,
State Expert Appraisal Committee,
Ground Floor,
Panagal Building,
No.1, Jennies Road,
Saidapet, Chennai- 600 015.



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5.The Commissioner of Geology and Mining,
Industrial Estate,
Guindy,
Chennai- 600 032.

6.The Chairman,
State Level Environment Impact Assessment Authority,
Panagal Building,
Jennies Road, Saidapet,
Chennai - 60 015.

*(R6 impleaded vide Court order
dated 15.02.2023)*

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records pertaining to the impugned order passed by the 4th respondent in his proceedings in 290th meeting of SEAC held on 30.06.2020 in Agenda No.290-10 file No.9153 of 2022 and consequential proceedings issued by the 6th respondent dated 21.07.2022 in 535th meeting of SEIAA in Agenda No.10 and quash the same and consequently directing the 6th respondent to issue SEIAA clearance for grant of quarrying licence in favour of the petitioner as per Tamil Nadu Mines and Minerals Concession Rules within the time stipulated by this Court.

*(Prayer amended vide Court order
dated 15.02.2023)*

For Petitioner	: Mr.Sricharan Rangarajan, Senior Counsel Assisted by Mr.C.Jeganathan
For R1	: Mr.K.Manikandan Central Government Standing Counsel



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For R2, R3& R5 : Mr.SRA.Ramachandran
Additional Government Pleader

For R4 and R6 : Mr.N.Dilipkumar
Standing Counsel

ORDER

Heard the learned Senior counsel for the writ petitioner and the learned standing counsel for the fourth respondent.

2.The writ petitioner was granted mining lease for a period of 5 years from 21.07.2005 to 20.07.2010 for the petition mentioned lands. The lease was subsequently renewed. The mining lease expired in January, 2022. The petitioner applied for further renewal. The jurisdictional Tahsildar renewed the grant of lease in favour of the petitioner. The jurisdictional RDO also endorsed the same. The Assistant Director (Mines) approved the mining plan. However, the petitioner had to obtain clearance from the fourth respondent and the case was placed before the State Expert Appraisal Committee(SEAC). The committee took note of the fact that a fireworks unit is located within a distance of 220 meters and declined to recommend the petitioner's case. Challenging the same, this writ petition came to be filed.



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3. When the matter was taken up for hearing, it was pointed out by the learned standing counsel that the report of the Expert Appraisal Committee is only recommendatory in nature and it was subsequently placed before the State Environmental Impact Assignment Authority (SEIAA) which accepted the decision of the State Expert Appraisal Committee (SEAC) on 21.07.2022. SEIAA was also impleaded as sixth respondent. The writ prayer was also amended.

4. The learned Senior Counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

5. The learned Standing Counsel appearing for the respondents addressed the Court on the strength of the written instructions provided to him. His objections are two fold. He pointed out that under Section 16 of the National Green Tribunal Act, the petitioner has an effective alternative remedy. The petitioner can very well go before the National Green Tribunal and canvass his case there. The petitioner has not given



any reason for bypassing the statutory remedy. The second objection is that the Hon'ble Tribunal is seized of the matter. He drew my attention to the orders passed in O.A.No.304 of 2019 (M.Haridasan Vs State of Kerala). Paragraph Nos.7,9,11 and 13 of the order dated 09.12.2021 passed by the Tribunal are as follows:

*"7.To complete the narration, we may record that **the Tribunal sought a report from CPCB and as per report dated 09.07.2020, it was suggested that minimum distance should be 100m where blasting is not involved and 200m where blasting is involved.** The Tribunal accepted the said view and vide order dated 21.07.2020, issued directions in terms thereof which are reproduced for ready reference, as follows:*

"3.Accordingly, the CPCB has filed its report on 09.07.2020 concluding as follows:

"6.0 Conclusion:

In view of available information, following minimum distance criteria may be considered for permitting stone quarrying by SPCBs:

*** Note: The regulations for danger zone(500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should be taken to minimise the impact on environment.*

However, if any states is already having stringent criteria than the above for minor mineral mining (i.e.



more prescribed distance than the above), the same shall be applicable."

4. In view of the above, the said criteria be followed throughout India. The CPCB may monitor compliance."

9. Original applicant has opposed the applications of the PPs and submitted that minimum distance of 200m must be maintained in the interest of safety of the inhabitants as well as flora and fauna in the area. The Tribunal must follow the 'Precautionary' principle and, if any, further study is undertaken, mining may not be allowed within 200m pending such study. It was also submitted that mining is continuing illegally in violation of orders of Hon'ble Supreme Court and on that aspect the matter is being further raised before the Hon'ble Supreme Court by the applicant.

11. Further submission is that due to topography of the State of Kerala, longer distance will obstruct the legitimate mining activities in violation of sustainable development principle. With the use of Nonel Detonation technology, 50m distance is adequate and does not cause any adverse impact.

13. We have duly considered the above submissions. We do not find any merit in the objection of the PPs that this Tribunal has no jurisdiction in view of distance laid down under the Mines and Mineral Rules. In view of law laid down inter-alia in Mantri Techzone Pvt.Ltd., v. Forward Foundation and Ors., and the Director General (Road Development) NHAI v. Aam Aadmi Lok Manch. There is also no merit in the



contention that CPCB has no jurisdiction under the EP Act. CPCB has jurisdiction under EP Act, as per delegation under section 23 of the said Act as well statutory powers under the Air and Water Acts and also under directions of this Tribunal. Plea of the PPs that the study relied upon clinches the matter in their favour is also not born out from the said study. There is also no merit in the contention that even at the cost of environment mining must be allowed having regard to peculiar topography of Kerala."

6.The learned standing counsel would point out that the National Green Tribunal is seized of the issue regarding safety distance. Now the accent is on the precautionary principle. The petitioner cannot insist that the SEIAA will have to adopt the distance rules set out in the Mines and Mineral Concession Rules. That is why respondents 4 and 6 have taken a decision not to sustain the case of the writ petitioner. He called for dismissal of the writ petition.

7.I have carefully considered the rival contentions and went through the materials on record. The objection anchored on the availability of the alternative remedy does not appeal to me. It is well settled that the non exhaustion of alternative remedy is a rule of discretion and has no bearing on the jurisdiction of this Court.



8. The learned Senior Counsel appearing for the petitioner drew my attention to the judgment reported in **2022 SCC OnLine SC 639** in the case of *Madhya Pradesh High Court Advocates Bar Association and Another Vs Union of India and another*. The Hon'ble Supreme Court reiterated that the jurisdiction of the High Court under Article 226 of the Constitution of India, can never be ousted and even against the orders passed by the National Green Tribunal, petitions would lie under the Article 226 before the High Courts. When this is the position, an order passed by SEIAA is definitely amenable to challenge before this Court. That apart, if there are factual disputes involved, the petitioner may have to be relegated to pursue the alternative remedy. I do not find any factual issue at all. I therefore, reject the objection founded on Section 16 of the National Green Tribunal Act. I hold that the writ petition is very much maintainable.

9. It is true that the Hon'ble Green Tribunal is presently deliberating on the issue of safety distance. But then, from a reading of the interim order made in O.A.No.304 of 2019, I am not able to come to the conclusion that the Tribunal is proposing to lay down the norms for the entire country. It appears to be more Kerala specific. In any event,



the Hon'ble Tribunal has not really lay down any distance rules for quarries in Tamilnadu. Till the Hon'ble Tribunal lays down a definite norms, the request for grant of mining leases cannot be kept hanging in the air. The report of the fourth respondent as well as the order passed by the sixth respondent are not based on any statutory provision or binding dicta of the Hon'ble Green Tribunal. It is for this reason, I am constrained to interfere. Even according to the respondent authorities, the petition mentioned quarry site is located at a distance of 220 meters from an existing fireworks unit. This does not fall foul on any statutory provision.

10. In this view of the matter, the impugned orders are set aside. The sixth respondent is directed to give environmental clearance in favour of the writ petitioner within a period of four weeks from the date of receipt of a copy of this order. This is ofcourse, subject to fulfilment of other formalities. I make it clear that I am granting only the first part of the writ prayer. SEIAA cannot be expected to mechanically adopt the distance rules set out in the Tamil Nadu Mines and Minerals Concessions Rules, 1959. Since in the given facts and circumstances of this case, it is seen that the petitioner has been carrying on mining



operation for almost 18 years without giving room for any complaint and since all the other authorities have upheld the stand of the petitioner, I am directing the sixth respondent to grant environmental clearance. The order of this Court shall not be understood as having laid down any principle of law. Relief is given to the petitioner considering the special facts and circumstances of this case.

11. This writ petition is allowed accordingly, No costs.

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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