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W.P.No.21379 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR  
AND  
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

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M/s Sankaran Minerals and Mines  
rep. by its Proprietor  
Mr.A.S.Shankar Ganesan  
22-A, Kumar Nagar, South  
3<sup>rd</sup> Street, (Opp. Suriya Theatre)  
Tiruppur 641 603

..

Petitioner

v.

1. The Secretary (MoEFCC)  
Ministry of Environment Forest  
and Climate Change  
Indira Paryavaran Bhavan, Ali Ganj  
Jorbag Road  
New Delhi 110 003

2. The Chairman  
State Level Environment Impact  
Assessment Authority (SEIAA)  
3<sup>rd</sup> Floor, Jeenis Road  
Saidapet  
Chennai 600 015



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3. The Chairman (The District Collector)

District Environmental Impact

Assessment Authority (DEIAA)

Collectorate, Tiruppur District

4. The Director

Department of Geology and Mining

Guindy, Chennai 600 032

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents from in any way restricting the petitioner from operating the mining activities as per the 1<sup>st</sup> respondent's notification S.O.No.1533(E) dated 14.09.2006 published in the Gazette of India, Extraordinary Part II and Section 3, sub section (ii), Ministry of Environment and Forests.

For Petitioner :: Mrs.Reshmi Christy

For Respondents :: Mr.A.R.Sakthivel  
Senior Panel Counsel - CGSC for R1  
Mr.K.Srinivasamurthy  
Senior Panel Counsel for R2  
Mr.M.Bindran  
Additional Government Pleader  
for R3 & R4

### ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner has filed the above writ petition praying for issuance of a mandamus forbearing the respondents from in any way restricting the petitioner from operating the mining activities, as per the 1<sup>st</sup> respondent's



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notification bearing S.O.No.1533(E) dated 14.09.2006 published in the Gazette of India, Extraordinary Part II and Section 3, sub section (ii), Ministry of Environment and Forests.

2. The petitioner appears to be a lessee in respect of the land where he intended to undertake mining operation. It is the case of the petitioner that he obtained proper permission from the authorities for mining activities and commenced operation from 23.01.2010. It is admitted by the petitioner that it is mandatory for every licensee to get environmental clearance even for mining activities in less than 5 hectares. The petitioner has stated that his license is confined to 3 and odd hectares. The grievance of the petitioner is that his application for getting environmental clearance certificate, which was submitted on 27.10.2017 through online, is not yet considered.

3. The learned counsel for the second respondent submitted that the petitioner's application has been treated under violation category. The learned counsel also pointed out the statutory requirements for grant of environmental clearance certificate in respect of the mining activities.



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4. Since it is an admitted fact that the petitioner was indulging in mining operations without a license for about one year, the decision of the second respondent to treat the petitioner under violation category cannot be found fault with. It is to be noted that the notification dated 14.09.2006 issued by the Ministry of Environment and Forests specifically refers to the mandatory requirements. At the second stage, clauses (ii) and (iii) of the requirement indicated in the said notification read as follows:-

“(ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category A Hydroelectric projects Item 1(c)(i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for pre-construction activities. If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.



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(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.”

The notification also specifically refers to public consultation involving public hearing at the site or in its close proximity – district wise. After completion of the public consultation as required under the notification, the applicant shall address all the material environmental concerns expressed during this process and make appropriate changes in the draft EIA and EMP. Without addressing the issues raised at the public consultation, the petitioner cannot get the clearance from the second respondent. Therefore, in the present context, the learned counsel for the second respondent submitted that the petitioner, who is the project proponent, was given the Terms of Reference under violation category and was informed that the petitioner/project proponent has not submitted application for environmental clearance through online with final EIA/EMP reports regarding ecological damage, remediation plan and natural and community resource



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augmentation plan, as per the statutory notification of MoEF&CC.

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5. Despite a specific request made to the petitioner that he should submit the application seeking environmental clearance through online enclosing final EIA & EMP reports along with other documents and the same was also communicated to the petitioner, the latest of communication being dated 22.06.2023, the petitioner has not responded. This fact is not even disputed before this Court.

6. When the statute requires compliance of certain procedures, this Court cannot issue a direction to circumvent the mandatory requirements of law. In the present case, the petitioner has come forward with this petition not for a mandamus to consider his application, but with a prayer to forbear the respondents from in any way restricting the petitioner from operating the mining activities as per the 1<sup>st</sup> respondent's notification dated 14.09.2006. Therefore, this Court is unable to find any merits in the writ petition.

7. However, the learned counsel for the petitioner now states that the



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petitioner may be permitted to pursue the application for environmental clearance with an undertaking that the petitioner will strictly adhere to the mandatory requirements. In view of the same, this writ petition is closed with liberty to the petitioner to pursue his application for environmental clearance before the second respondent as per law. There shall be no order as to costs.

Index : yes/no

(S.S.S.R.,J.)

(N.S.,J.)

Neutral citation : yes/no

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SS

To

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and Climate Change  
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