



W.P.(MD)No.30173 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.30173 of 2024
and W.M.P.(MD)No.25392 of 2024

R.R.Construction,
Rep. By its Partner R.Saravanan,
No.4-D, N.C.C.Office Road,
Visalatchipuram,
Madurai North Taluk,
Madurai – 625 014.

... Petitioner

/Vs./

The Sub Collector,
Periyakulam,
Theni District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the respondent bearing Na.Ka.No.8970/2022/அ7 dated 28.10.2024, quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.Veerakathiravan,

Addl. Advocate General, Assisted by
Mr.S.Shanmugavel,
Additional Government Pleader.



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ORDER

This writ petition has been filed challenging the order passed by the respondent dated 28.10.2024 thereby imposed penalty of Rs.2,14,28,549/- as penalty for the illegal quarrying of gravel and rough stone.

2. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The petitioner was issued quarrying lease dated 10.06.2016 to quarry rough stone and gravel from the patta land comprised in S.F.Nos. 372/1A (0.33.0 Hectare), 372/1B (0.15.5 Hectare), 372/2A (0.30.0 Hectare, 372/2B (0.20.0 Hectare), 372/2C (0.38.0 Hectare), 372/2D (0.40.0 Hectare), 372/2D (0.03.0 Hectare), 378/1B (0.25.0 Hectare), 378/1C (0.30.0 Hectare) and 378/2 (0.38.0 Hectare), measuring to total extent of 2.72.5 hectares situated at Thimmarasanayakkanur Bit – 1 Village, Andipatty Taluk, Theni District for a period of five years from the date of execution of the lease deed. The petitioner also obtained mining plan approval and environmental clearance. Accordingly, the



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petitioner was permitted to quarry rough stone and gravel to the tune of 1,73,290 cu.m., and 40,768 cu.m., respectively. The lease period of the petitioner got expired on 09.06.2021. While being so, the petitioner was served with impugned order alleging that the petitioner had excessively quarried gravel and rough stone to the tune of 21057 cu.m., and 28698 cu.m., respectively from the leasehold area and thereby, he was imposed with penalty under Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959.

4. The learned counsel appearing for the petitioner would submit that the petitioner was not served with any show cause notice and he was not given opportunity of hearing before passing the order. According to the respondent, 39 quarries were issued with single enquiry notice and they were directed to appear for hearing on 08.01.2024 along with files, on the strength of the report submitted by the Inspection Committee. It was received by one Ganesan, that too in the name of M/s.Blue Metal and he himself submitted his explanation. The petitioner firm is consisting of two partners namely, R.R.Ramamohanrav and R.Saravanan. The said Ganesan is noway connected with the petitioner and he was



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never engaged by the petitioner to receive any show cause notice or to attend the enquiry conducted by the respondent. That apart, the impugned order does not have any discussion about the explanation submitted by the said Ganesan. Therefore, it is a non-speaking order. In support of his contention, he relied upon the the following judgments:-

(i) Division Bench judgment of this Court dated 29.10.2018 in WP(MD)No.19936 of 2017 etc., batch;

(ii) Common order of this Court dated 12.08.2022 made in WP.Nos.32267 & 32268 of 2012;

(iii) Judgment of the Division bench of this Court reported in ***2023-1-Writ L.R. 140*** in the case of ***S.Annadurai vs. The Government of Tamil Nadu, Secretary to Government Industries Department, Fort St..George, Chennai – 600 009***;

(iv) Judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 1711-1712/2021 dated 27.11.2024;

(v) Judgment of the Hon'ble Supreme Court in Civil Appeal No. 13919 of 2024 dated 05.12.2024.



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5. On production of the files, the learned Additional Advocate General appearing for the respondent submitted that the petitioner was duly served with enquiry notice dated 29.12.2023 through person. It was duly received by one Ganesan, on behalf of the petitioner and he submitted an explanation. Therefore, the petitioner has given an opportunity to submit the explanation and on receipt of the said explanation, the respondent passed the orders. That apart, the judgments cited by the learned counsel appearing for the petitioner are not applicable to the case on hand, since the Rule permits for personal hearing in the said judgments. Whereas the Rule 36-A (5) of the Tamil Nadu Minor Mineral Concession Rules, 1959 does not provide any opportunity of hearing and it says only show cause notice.

6. The learned Additional Advocate General appearing for the respondent further submitted that even if it so, the petitioner was given an opportunity of hearing and one Ganesan appeared on behalf of the petitioner and submitted his explanation. Therefore, there is no violation of principles of natural justice. The order impugned in this writ petition is appealable one under Rule 36-C (2) of the Tamil Nadu Minor Mineral



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Concession Rules, 1959 before the appellate authority. Hence, without exhausting the appeal remedy before the appellate authority, this writ petition is not at all maintainable and prayed for dismissal of this writ petition.

7. On perusal of the records, it reveals that the enquiry notice dated 29.12.2023 was marked to the petitioner. According to the respondent, it was served by person to the petitioner's address. On perusal of the acknowledgment, it reveals that one Ganesan received the enquiry notice on behalf of one M/s.RR Blue Metal. The said RR Blue Metal is nothing to do with the petitioner. The petitioner is RR Construction and it a partnership firm consisting of two partners, namely, R.R.Ramamohanrav and R.Saravanan. The said Ganesan is neither a partner nor a representative engaged by the petitioner to receive the enquiry notice or to submit any explanation.

8. Even assuming that the said Ganesan was informed by the petitioner to receive the enquiry notice and submit any explanation, on perusal of the order impugned in this writ petition dated 28.10.2024, the



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respondent, without even discussing any of the explanation submitted by the said Ganesan, simply mentioned about the enquiry which was held on 08.01.2024 and 28.10.2024, and passed the impugned order. Admittedly, the petitioner was not served with any notice and therefore, it is nothing but a non speaking order.

9. It is relevant to extract Rule 36-A (5) of the Tamil Nadu Minor Mineral Concession Rules, 1959, which is as follows:-

“[36-A. Penalties:

(5) [Whenever any person contravenes any provisions, other than sub-rule (1) of rule 10 of these rules, or conditions of a quarrying permit or quarrying lease granted under these rules the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the case may be, shall after giving notice, charge and that person and recover from him enhanced seigniorage fee up to a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] or in the alternative, he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of



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continuing contravention with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub-rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]”

10. The learned Additional Advocate General appearing for the respondent specifically contended that the rule does not permit personal hearing and the respondent issued enquiry notice for the enquiry to be conducted on 08.01.2024 calling upon the petitioner to attend the same, along with necessary documents. Therefore, it is nothing, but an opportunity of hearing.

11. Admittedly, the petitioner was not served with any notice of hearing and it is a clear violation of principles of natural justice. On the



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sole ground, the order impugned cannot be sustained and is liable to be quashed. Accordingly, the impugned order dated 28.10.2024 is hereby quashed. This matter is remanded back to the respondent and the respondent is directed to issue a fresh show cause notice under Section 36-A (5) of the Tamil Nadu Minor Mineral Concession Rules, 1959, within a period of two weeks from the date of receipt of a copy of this order after giving an opportunity of hearing to the petitioner and pass orders on merits and in accordance with law, within a period of four weeks thereafter.

12. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.01.2025

Index : Yes / No
NCC : Yes / No
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G.K.ILANTHIRAIYAN, J.

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TO:-

The Sub Collector,
Periyakulam,
Theni District.

Order made in
W.P.(MD)No.30173 of 2024

Dated:
27.01.2025