

(2024) 01 KL CK 0008
In the High Court Of Kerala
Case No : Writ Petition (C) No. 33324 Of 2023

A.H. Sheriff

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 03-01-2024

Acts Referred:

Kerala Minor Mineral Concession Rules, 2015 — Rule 27(2), 27(2)(d)

Citation : (2024) 01 KL CK 0008

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : Enoch David Simon Joel, S.Sreedev, Rony Jose, Leo Lukose, Karol Mathews Sebastian Alencherry, Derick Mathai Saji, Karan Scaria Abraham, Bimal K.Nath

Final Decision : Dismissed

Judgement

Murali Purushothaman, J

1. The petitioner submitted Ext.P1 application dated 28.05.2019 before the 2nd respondent District Collector for grant of No Objection Certificate (NOC) for quarrying granite from revenue puramboke land. Ext.P2 acknowledges the receipt of Ext.P1. The application was forwarded by the District Collector to various revenue authorities for their remarks and reports. The 3rd respondent Tahsildar, by Ext.P3 letter dated 27.08.2019, recommended the grant of NOC. However, no orders were passed by the District Collector on Ext.P1 for more than four years. Later, Ext.P1 was rejected by the District Collector by Ext.P4 order dated 21.09.2023. In Ext.P4, it is stated that pending Ext.P1 application, the Government have issued G.O (MS) No.28/2021/RD dated 28.01.2021 (Ext.P5) providing guidelines for grant of NOC for mining of minerals from Government lands and that the application of the petitioner for grant of NOC can be considered only in accordance with the said guidelines. The petitioner states that the application for NOC submitted in May, 2019 cannot be rejected on the basis of Ext.P5 guidelines issued in January, 2021. According to the petitioner, his

application for NOC has to be considered on the basis of the law prevailing at the time of submission of the application and Ext.P5 issued much thereafter cannot be relied upon to reject the same. The petitioner also relied on Ext.P6 judgment of this Court wherein it was held that the application for grant of NOC for mining minerals shall be considered in the light of the law prevailing as on the date of filing of the application. Accordingly, the petitioner has sought for direction to quash Ext.P4 and to direct the District Collector to grant NOC de hors Ext.P5 guidelines.

2. Heard Sri.Enoch David, the learned counsel for the petitioner and Sri.Bimal K.Nath, the learned Senior Government Pleader for the respondents.

3. Sri.Enoch would contend that Ext.P1 application was submitted in May, 2019 and the District Collector chose to sit over the application indefinitely. Ext.P5 guidelines were issued in January, 2021. The District Collector took up Ext.P1 application for consideration after an inexplicable delay of more than four years and rejected the same relying on Ext.P5 guidelines. It is contended that the District Collector cannot be permitted to take advantage of the delay by rejecting the application relying on the guidelines which came much subsequently. Sri.Enoch would contend that the petitioner was not responsible for the delay in considering the application and the law is trite that the application will have to be considered on the basis of the law prevailing at the time of its submission. Sri. Enoch refers to the judgment of this Court in W.P.(C) No.36198 of 2022 wherein this Court observed that the District Collector has no authority to examine the scientific feasibility of excavation and directed the District Collector to consider the application for grant of NOC in accordance with law. It is stated that the said judgment has been confirmed by the Division Bench in W.A. No.1325 of 2023.

4. Per contra, Sri. Bimal, the learned Senior Government Pleader would submit that the petitioner has not approached this Court during the pendency of Ext.P1 application seeking a direction to consider the same. It is also pointed out that Ext.P5 Government Order is not challenged in this writ petition and that the same has been issued pursuant to the direction of this Court in W.P.(C) No.20464 of 2019 taking note of the fact that the earlier procedure for issuance of NOC for quarrying lease across the State was not transparent. Ext.P5 has been issued to bring transparency in the matter of issuance of NOC for mining of minerals. Sri.Bimal also refers to the decisions of the Hon'ble Supreme Court in *State of Tamil Nadu v. M/s. Hind Stone and Others* [(1981) 2 SCC 205: AIR 1981 SC 711] and *State of Rajasthan and Others v. Sharwan Kumar Kumawat etc.* [AIR 2023 SC 3586: AIR Online 2023 584] and the judgments of this Court in W.P.(C) Nos.15541 of 2022 and 35849 of 2022 to contend that mere filing of an application for NOC does not create any indefeasible right and the applicant whose application was not acted upon before the issuance of Ext.P5 Government Order cannot seek any direction for consideration of the application de hors the guidelines therein. Referring to the judgment in W.P.(C) No.36198 of 2022 confirmed by the Division Bench in W.A. No.1325 of 2023, referred to by

Sri.Enoch, Sri.Bimal submits that the said judgment dealt with the question as to whether the District Collector can examine the scientific feasibility of excavation while considering an application for NOC for mining minerals.

5. The application of the petitioner for NOC dated 28.05.2019 was pending before the District Collector for more than four years. Ext.P5 Government Order bringing comprehensive guidelines for grant of NOC for mining of minerals from Government land was issued on 28.01.2021. The application of the petitioner was rejected by Ext.P4 order dated 21.09.2023, much after the issuance of guidelines in Ext.P5. The case of the petitioner is that his application has to be considered on the basis of the law prevailing at the time of submission of the application and Ext.P5 order issued subsequently cannot be relied upon to reject the application. The learned Senior Government Pleader would contend that the petitioner has no vested right to have his application considered applying any particular provision and that he has not approached this Court before issuance of Ext P5 order, seeking a direction to consider his application for NOC.

6. In Ext.P6 judgment in W.P.(C) No.38176 of 2022, relied on by Sri.Enoch, this Court held as follows:

"2. The petitioner applied for grant of NOC for undertaking commercial activity in Government land on 12.3.2019. The 2nd respondent after a long three years, rejected the application on 15.11.2022 solely on the ground that Ext.P5 guidelines for grant of NOC over Government lands had come into force from 28.1.2021. The question whether the guidelines can be applied in cases where applications have been submitted before the coming into force of the guidelines was considered by this Court in WPC No.29498/2021 and this Court categorically held that the guidelines could not be applied and the application submitted by the petitioner in the said case is liable to be considered and disposed of in the light of the procedure that was in force and without reference to the Government order dated 28.1.2021. I do not find any reason to take a different view.

In the above circumstances, the writ petition is allowed. Exhibit P4 is quashed. There will be a direction to the 2nd respondent to consider the application submitted by the petitioner for NOC in the light of the procedure which was in force and without reference to the Government order dated 28.1.2021. Appropriate orders shall be passed within six weeks of receiving a certified copy of this judgment."

7. The said judgment was rendered following the judgment of this Court dated 22.03.2022 in W.P.(C) No.29498 of 2021. Paragraph '11' of the said judgment dated 22.03.2022 reads as follows:

"11. Having considered the contentions advanced on either side, I notice that the application for NOC was, admittedly, submitted on 01.01.2018. By Ext.P3 judgment, this Court had specifically directed the consideration of the same after obtaining reports from the Tahsildar and the Taluk Surveyor. The reports were, admittedly, before the respondents in July, 2018. In view of Ext.P3 judgment,

there was no justifiable reason for the respondents to have delayed the consideration of the application inordinately. Even if the contention raised by the respondents that the delay occurred due to the floods in 2018 is accepted, in view of Ext.P3 judgment, the 1st respondent was duty bound to take up the application, at least, as soon as the reminder made by the petitioner was submitted. Even as on that date, that is, on 08.06.2020, there was no order revising the procedure.”

(underlining supplied by this Court)

8. In the judgment dated 09.03.2023 in W.P.(C) No.15541 of 2022, relied on by the learned Senior Government Pleader, this Court in paragraph '8' held as follows:

“8. Having considered the contentions advanced, I notice that there is no challenge raised in this writ petition as against the Government Order dated 28.01.2021. The legislative competence of the State is, therefore, not a matter, which is to be considered in this writ petition. The petitioner had submitted an application for No Objection Certificate only in January, 2019. The learned Government Pleader submits that no steps had been taken on the said application and that the report was submitted by the Tahsildar only in June, 2022 after the issuance of the Government Order. As distinct from the connected cases, there was also no direction sought or obtained by the petitioner from this Court for an early consideration of its application for No Objection Certificate.

9. In the above factual aspects, I am of the opinion that the prayer as sought for in the writ petition is not liable to be granted. The petitioner, who had only submitted an application for No Objection Certificate, which was not acted upon before the issuance of the Government Order cannot seek any direction for the consideration of the No Objection Certificate without reference to the guidelines. This writ petition fails and the same is, accordingly, dismissed.”

(underlining supplied by this Court)

9. In W.P.(C) No.29498 of 2021, a direction was sought for and obtained by the petitioner therein from this Court for an early consideration of his application for NOC. In W.P.(C) No.15541 of 2022, there was no such direction seeking to consider the application for NOC. Accordingly, this Court distinguishing the case on hand, observed that, the petitioner therein, who had only submitted an application for NOC, which was not acted upon before the issuance of the Government Order cannot seek any direction for the consideration of the NOC without reference to the guidelines.

10. The judgment in W.P.(C) No.15541 of 2022 was subsequently relied on in W.P.(C) No.35849 of 2022 and this Court, in paragraph No.'5' of the said judgment held as follows:

“5. On a perusal of the above said judgment it could be seen that the court declined to interfere and grant the relief for the reason that the Government

order dated 28.01.2021 was not challenged in the said writ petition and further that even though a application for NOC has been filed prior to the issuance of Ext.P11 Government order no steps have been taken on the said application and further that unlike in other cases there was also no direction sought or obtained by the petitioner from this Court for early consideration of the application for NOC. In the present case also there is no challenge against Ext.P11 Government order or against Ext.R2(a) communication issued by the Government. It is also be seen that in Ext.P11 Government order for identifying the areas suitable for issuance of NOC for granite quarrying one of the conditions stipulated is that it shall have road access to the top of the identified area and further that in instances where there is no road access to the Government land proposed then bidding shall be done only when road access to the top of the land is made available. Admittedly in the present case also before the issuance of Ext.P11 Government order petitioner has not approached this Court seeking a direction to consider the application for NOC. Therefore, in the facts and circumstances of the case I am of the opinion that the judgment rendered by this Court in W.P.(C) No.15541of 2022 is applicable in the facts and circumstances of the present case. Further, the Government have issued Ext.P11 order pursuant to a direction issued by this Court in W.P.(C) No.20464 of 2019 wherein directions were issued taking note of the fact that the earlier procedure adopted for issuance of NOC for quarrying lease across the State was not transparent. Now as per Ext.P11, Government have taken a decision to go with e-tendering process which is the policy decision of the Government to bring transparency in the matter of auction of Government properties.”

(underlining supplied by this Court)

11. As regards the judgment of the Division Bench in W.A. No.1325 of 2023, as rightly pointed out by Sri.Bimal, the Division Bench was considering the competence of the District Collector to go into the scientific feasibility of excavation while considering an application for NOC for mining minerals. The Division Bench observed that since the judgment in W.P.(C) No.29498 of 2021 was not challenged by the State and has become final, the application for NOC has to be considered in consonance with the judgment in W.P.(C) No.29498 of 2021 and without examining the scientific feasibility. Paragraph No.7 of the said judgment reads as follows:

“7. It is not in dispute that the respondent applied for No Objection Certificate for the purpose of excavation of minerals by submitting an application under Rule 27(2) of the Kerala Minor Mineral Concessions Rules, 2015. As per Rule 27(2), the application is required to be accompanied by several documents including the No Objection Certificate under Rule 27(2)(d). The application submitted under Form B is to be considered by the competent authority under Rule 33. Such authority is supposed to examine all the aspects, including the report of the SEIAA. It is also not in dispute that W.P.(C) No.29498 of 2021 was disposed of making it clear that the NOC is required to be granted without referring to the

Government Order dated 28.01.2021 and that judgment has not been challenged by the State. Therefore, the District Collector ought to have considered the application for NOC in accordance with the direction. Learned Single Judge has rightly considered all these aspects and has ultimately passed the impugned judgment directing the District Collector to grant NOC in accordance with law without examining the scientific feasibility and to grant the same if the respondent is otherwise entitled. In view of the observations, which are in consonance with the statutory provisions and the directions in the earlier writ petition, we do not find any reason to interfere with the impugned judgment."

(underlining supplied by this Court)

12. In *Hind Stone* (supra), the Hon'ble Supreme Court has held that the action of the Government in keeping applications for lease pending for long and later, rejecting them by applying a rule made subsequently, is not open to challenge. The Court observed that no one has a vested right to the grant of lease and none can claim a vested right to have an application for grant of lease to be dealt with in a particular way, by applying particular provisions and that in the absence of any vested right, the application has necessarily to be dealt with according to the rules in force as on the date of disposal of the application despite the fact that there is long delay since the making of the application. Paragraph '13' of the said decision reads as follows:

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O. Ms. No. 1312 (December 2, 1977) should be dealt with as if R.8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O.Ms. No. 1312 should be dealt with as if R.8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of R. 8C notwithstanding the fact that the applications had been made long prior to the date on which R.8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if R.8C did not exist."

13. Relying on the said decision, the Hon'ble Supreme Court, in Sharwan Kumar (supra), observed as follows:

"17. It is far too settled that there is no right vested over an application made which is pending seeking lease of a Government land or over the minerals beneath the soil in any type of land over which the Government has a vested right and regulatory control. In other words, a mere filing of an application ipso facto does not create any right. The power of the Government to amend, being an independent one, pending applications do not come in the way. For a right to be vested there has to be a statutory recognition. Such a right has to accrue and any decision will have to create the resultant injury. When a decision is taken by a competent authority in public interest by evolving a better process such as auction, a right, if any, to an applicant seeking lease over a Government land evaporates on its own. An applicant cannot have an exclusive right in seeking a grant of license of a mineral unless facilitated accordingly by a statute."

14. Though there is inordinate delay on the part of the District Collector in considering Ext.P1 application for grant of NOC for mining of minerals from Government land, since during the pendency of the application Ext.P5 Government Order has been issued providing comprehensive guidelines for grant of NOC, the application of the petitioner has to be considered in the light of Ext.P5. Ext.P5 Government Order is not under challenge in this writ petition. There is no direction sought for and obtained by the petitioner from this Court for an early consideration of Ext.P1 application before issuance of Ext.P5 Government Order. As held by the Hon'ble Supreme Court, the petitioner has no vested right to seek Ext.P1 application to be considered by applying the procedure as applicable before the issuance of Ext.P5. I find no reason to interfere with Ext.P4 order.

The writ petition fails and is, accordingly, dismissed.