
(2014) 07 MP CK 0021
In the Madhya Pradesh High Court
Case No : W.P. No. 1617/2014

Balaji Stone Crusher

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Environment (Protection) Act, 1986 — Section 3

Citation : (2014) 07 MP CK 0021

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Prashant Sharma, Advocate for the Appellant; Vivek Khedkar, Dy. Advocate General, Harish Dixit, Akhil Sinha and Narottam Sharma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard.

2. The petitioner has filed this petition for quashment of order dt. 16.12.2013 (Annexure P/1). The petitioner further prayed a relief that the petitioner be permitted to continue mining operations and crushing activities up to the decision on his application for granting permission of environmental clearance (Annexure P/6).

3. The petitioner was granted a lease of mining of stone boulders at village Billowa for the purpose of use of the stones in crusher. The aforesaid lease was renewed vide letter dt. 26.9.2013 for a period of ten years with a condition that the petitioner shall submit no objection certificate from the M.P. State Pollution Control Board. Earlier the Pollution Control Board has granted No Objection Certificate up to 30.6.2015 with certain conditions. The aforesaid NOC was revoked vide order dt. 16.12.2013 on the ground that the petitioner did not receive approval of mining plan as required under the provisions of M.P. Pollution Control Act.

4. Learned counsel for the petitioner has submitted that the approval for mining plan as a pre-condition for grant of NOC is not necessary in accordance with the provisions of amended Rule 18(2) of the M.P. Minor Minerals Rules, 1996 (hereinafter referred as "Rules of 1996"). It is further submitted by the counsel that the area of the mining lease granted to the petitioner was less than five hectare, hence, the prior permission is not necessary.

5. Contrary to this, learned counsel appearing on behalf of the Pollution Control Board has submitted that in view of the notification dt. 14.9.2006 issued by the Central Government in exercise of powers conferred under the provisions of Environmental (Protection) Act 1986, a prior permission for mining plan is necessary. Because no permission was granted, hence, the order passed by the M.P. Pollution Control Board is in accordance with law.

6. It is an admitted fact that the State vide gazetted notification dt. 23.3.2013 has amended Rules of 1996 and Rule 18(2) of the Rules of 1996 was substituted, which reads as under:-

The sanctioning authority shall make such inquiries as he may deem fit. The sanctioning authority, may take decision to grant of quarry lease or refuse to sanction it or renew the quarry lease or refuse to renew it before the expiry of quarry lease already sanctioned, after receiving the enquiry report. Information of in-principle sanction, shall be given to applicant. Applicant shall furnish approved mining plan/approved environment management plan, within six months from such information. Provided that if in-principle sanction is for five hectare or more area, then applicant from the date of such information, shall submit environment permission obtained under notification dated 14.09.2006 of Ministry of Environment and Forest within period of six months. After completion of all formalities sanctioning authority shall issue grant order or it's renewal of quarry lease. On the basis of satisfactory reasons, the sanctioning authority may permit to enhance the time period, if all formalities are not completed in prescribed time period:

Provided that no new quarry lease shall be sanctioned without obtaining opinion of the respective Gram Sabha:

Provided further that if the application, is not disposed of by sanctioning authority within the period of six months then application shall be disposed of by senior authority as mentioned in rule 6.

7. In accordance with the aforesaid rule, if the area of quarry lease is less than five hectare, then the applicant shall furnish approved mining plan within six weeks from the information. Apart from this rule, notification dt. 14.9.2006 was issued by the Central Government in exercise of powers conferred by subsection (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986. In accordance with the aforesaid notification, requirement of prior environmental clearance for certain activities is necessary

and in the schedule mining of minerals was mentioned. Earlier it was five hectare or up to five hectare. The relevant entry is as under:-

8. Another notification was issued on 9th September 2003 and in the schedule, for item No. 1(a) and entries relating thereto, the following item and entries were substituted:-

9. From the aforesaid schedule, it is clear that in respect of mining lease having area less than five hectares in respect of minor mineral, prior environmental clearance is necessary. It is also necessary in the case of renewal. The Environment (Protection) Act, 1986 is a special act, hence, it would prevail over the provisions of Rules of 1996. In accordance with the notification, renewal of mining lease can not be granted if there is no prior environmental clearance by the Committee constituted by the Central Government, Ministry of Environment and Forest for the aforesaid purpose. The Ministry of Environment and Forest vide gazette notification dt. 30th June 2014 constituted State Level Environment Impact Assessment Authority for the State of M.P. in exercise of powers conferred under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986. The petitioner has already submitted an application for environmental clearance (Annexure P/6).

10. In view of the aforesaid statutory provisions, in our opinion, without getting prior environmental clearance, the petitioner can not operate the mine because the quarry lease could not be renewed in favour of the petitioner.

11. In this view of the matter, Writ Petition is disposed of with the following directions:-

(i) That the respondent No. 4 Authority shall pass appropriate order in the application submitted by the petitioner for environmental clearance (Annexure P/6) within a period of six weeks from the date of receipt of copy of the order.

(ii) In accordance with the order that may be passed by the respondent No. 4 Authority, M.P. Pollution Control Board, shall consider the request of the petitioner for grant of NOC within a period of two weeks thereafter.

(iii) It is hereby clarified that this court has not opined about the merits of the case.

12. No order as to costs.