

(2004) 12 KL CK 0065
In the High Court Of Kerala
Case No : W.A. No. 2128 of 2004

Biju Chacko and Others

APPELLANT

Vs

The Dy. Director, Mining and Geology

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2006) 1 KLJ 401

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Sheji P. Abraham, for the Appellant; M.M. Monaye, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Third writ petitioner was granted a quarrying permit by the Geologist, Department of Mining and Geology, Ernakulam extract and remove 200 M.T. of laterite from an area of 15 cents of land comprised in Survey No.296/19 of Aikkaranadu Sough Village, Kunnathunadu Taluk. Permit was valid up to 4-5-2004. Later a mass petition was received by the Geologist from the residents of Kavanmukal Colony of Poothrukka Panchayat Ward No.X and also from few others. Prima facie Geologist felt that the grievance raised by them was genuine, consequently quarrying permit was Suspended on 21-4-2004. In the meantime, writ petitioners approached this court and filed WP(C) No A 4002 of 2004 and his court vide judgment dated 29-06-2004 directed the Geologist to take a final decision on objections filed. Objections were heard and the Geologist passed an order dated 27-4-2004 stating as follows:

The-additional respondents submitted that about 15 houses are there in the vicinity of the quarry and the proposed quarrying is done within a radius of 50m from the houses. The sound produced by the laterite cutting machine was high and the children in the poor colony cannot study due to the sound. Dust produced due to the laterite cutting process is flying into their houses. Most of

the houses in the colony are not having shutters for their windows and requested the undersigned to make a visit to the site. Accordingly I have visited the area on 23-7-04. It was found that the distance from the outer edge of the quarry to the house of Sri. P.K. Mani was 52 ms. and from the house of Sri. Joy, the additional respondent 4 was 42 ms. The residents of the colony who gathered during the site inspection as well as the respondents informed that the sound and the dust produced during the machine cut was intolerable and they have no objection if laterite cutting using machine is not advisable in an area where small houses are clustered. It was found that the grievance of the dwellers in the above colony is genuine.

On the basis of the above reasoning Geologist concluded that the licence be renewed with a condition that the licensee should not employ mechanized method for cutting laterite. Petitioners are aggrieved by the said direction and have approached this court. Counsel appearing for the writ petitioners Sri. Sheji P. Abraham submitted that after having satisfied that the petitioner is eligible to get the licence for quarrying from an area of 15 cents Geologist is not justified in imposing a condition that he shall not use mechanised method for quarrying laterite. Counsel submitted Rules permit him to do quarrying using mechanised method since quarrying of laterite manually is not being done at present. Counsel also submitted, after having received an amount of Rs.5000/- from the petitioners there is no justification in imposing such a condition.

2. Counsel appearing for the contesting respondents submitted that before granting the licence complaints of the residents were not examined. Geologist after making an on the spot inspection was convinced of the grievance of the residents of the locality and thereafter imposed the condition for quarrying by cutting laterite manually and not by employing mechanised methods. Counsel appearing for the writ petitioners brought to our knowledge a decision of this court reported in Sivadas Vs. Geologist, Mining and Geology Department, and submitted that revenue authorities have no authority to question or impose restrictions on the licence issued by the Geologist for quarrying sand from land privatively owned.?

3. We are of the view the said decision would not apply to the facts of this case. So far as this case is concerned objection is raised by the people of the locality. Facts would indicate that residential houses are situated within 45 metres. The conditions imposed formatting licence state that no quarrying shall be done within 75 metres of Railway line and 50 metres of public road, water source, residential building, boundary wall of worship, burial grounds of burning ghats except under and in accordance with the previous permission of the State Government or competent authority. In fact the above mentioned Condition was challenged before this court in Soman Vs. Geologist, contending that those conditions are unauthorised by the provisions of the Kerala Minor Mineral Concession Rules, 1967. Learned Single Judge repelled the contention and held that the rights of the people of the locality to have a decent environment, flowing

from Art.21 of the Constitution of India, will save the restrictions imposed. We are also in agreement with the learned Judge. That being the situation we find no reason to interfere with the order passed by the Geologist.

4. We may further point out that if at all petitioners are aggrieved by any of the directions of the Geologist, petitioners have got an effective remedy under the Minor Mineral Concession Rules. Chapter VIII of the Rules deals with appeal and review. Rule 49(1)(a) stipulates that any person aggrieved by any order made by the competent authority or authorised officer, as the case may be under these rules, may within two months from the date of communication of the order to him, prefer an appeal in form "Q" to the Appellate Authority appointed by the State Government in this behalf by notification in the Gazette. Rule 49(1)(b) stipulates that any person aggrieved by an order of the Appellate Authority under clause (a) may, within one month from the date of communication of such order to him, prefer a second appeal in form "Q" to the final Appellate Authority appointed by Government in this behalf by notification in the Gazette. Few other conditions have also to be satisfied for preferring an appeal. Rule 50 stipulates that where an appeal is made under clause (a) or clause (b) of sub rule (1) of rule 49, the Appellate Authority or the Final appellate authority, as the case may be, may confirm modify or set aside the order or pass such other order in relation there to as it may deem such other order in relation there to as it may deem just and proper. The order passed by the Final Appellate Authority shall be final and binding on the parties. The Joint Secretary of Industries has been notified as the Appellate Authority by the State Government and therefore any person aggrieved by the order of the Geologist has to file appeal under Rule 49(1)(a) to the Joint Secretary of Industries and the second appeal before the Principal Secretary of Industries. Since appellate remedy is provided under the statute petitioners are not justified in invoking. Art. 226 of the Constitution of India.

5. We may also point out Rule 51 also confers a power of review, which says that the competent authority or the appellate authority in case its orders have not been challenged in appeal under clause (a) or clause (b) of sub rule (1) of rule 49, as the case may be, or the final Appellate Authority may, on its own motion or an application by the interested party, review any order passed by it and pass such orders in reference thereto as it may deem fit. Rule 52 stipulates that no order under rules 50 and 51 shall be passed against any person interested, unless he has been given a reasonable opportunity of being heard. Further, Rule 53 stipulates that pending the final disposal of an appeal, second appeal or review the competent authority, appellate authority or the final appellate authority, may, as the case may be, for sufficient cause, stay the execution of the order against which appeal, second appeal or review has been made. We are of the view since the statute has provided remedies by way of appeal and second appeal followed by a review there is no justification in invoking jurisdiction of this court under Article 226 of the Constitution of India. The Writ appeal therefore would stand dismissed. However, dismissal of the writ appeal would not stand in

the way of the petitioners, if so advised, to move the first- Appellate Authority Joint Secretary of Industries within a period of two months from today; failing which the order of the Geologist would stand.