
(2019) 12 CAL CK 0086
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 271 Of 2018

Hiranmoy Roy

APPELLANT

Vs

Andaman And Nicobar Administration And Others

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Citation : (2019) 12 CAL CK 0086

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Gopala Binnu Kumar, S.K. Mandal

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

The writ petitioner argues that initially the writ petitioner started his stone crusher unit by complying with all norms in the first part of the year 2012. Subsequently, the renewal of the said licence to run the unit took place at regular intervals and was lastly renewed on 18th September, 2019.

Learned counsel for the petitioner submits that prior to expiry of such period, the petitioner had applied for renewal of licence necessary to run the stone crusher unit.

However, an objection was taken by the respondents as to the stone crusher unit being within the prohibited distance from a school. The matter ultimately came up before this Court in W.P.No. 317 of 2018, in which a co-ordinate Bench, vide order dated February 15, 2019 accepted the uncontroverted statement of the petitioner that the petitioner had shifted the physical position of the crusher establishment to 120.40 metres away from the nearby Government Primary School, Harinagar.

Accordingly, the learned Single Judge directed the respondent to allow the petitioner to use the boulders/stones lying in the stone crusher unit subject to

certificate issued by the Andaman and Nicobar Islands Pollution Control Committee, Port Blair, upon inspection to be carried out by the said authority within a period of four weeks from the date of communication of the order. Thereafter, inspection was carried out in accordance with such direction and as per the report of the Field Staff, the said crusher unit was found to be at the distance of 120 meters away from the nearby Government Primary School, Harinagar. By a subsequent speaking order dated March 26, 2019, however, the Pollution Control Committee refused to grant a certificate on the basis of the subsequent gazette notification No. 257 dated November 23, 2012 and order No.136 dated March 12, 2013, which specify the minimum distance of any stone crusher unit from the school to be 300 meters.

The petitioner thereafter sought a review of the said order on the ground that the notification-in-question was not applicable to the petitioner since, the petitioner's stone crusher unit was established and started functioning prior to the date of the notification, that is before November 23, 2012.

By the impugned order dated August 26, 2019, the Pollution Control Committee, although found that the said notification did not apply in respect of the petitioner's unit, the said Committee did not specifically grant renewal to the petitioner.

Learned senior counsel appearing on behalf of the respondent authorities points out from the notification dated November 23, 2012 and Order No.136 of March 12, 2013, which lays down the guidelines regarding the said notification, that the minimum distance from a nearby school for such a stone crusher unit to run shall be 500 meters for all districts.

Relying on such notification, it is submitted by learned senior counsel appearing for the respondent authorities that the fate of school children, being minors, shall be affected in the event the current environmental pollution norms, which have been fixed by taking into consideration recent research in the field, are not implemented. As such, it is argued that the petitioner, who has only shifted the unit upto 120.40 meters from the nearby school, ought not to be granted the licence for running the said unit in view of the present norms prescribing the minimum distance of such a unit to be 500 meters from the school.

However, it is clear from the impugned order itself that the Pollution Control Committee did not accept the contention of the respondents that the notification dated November 23, 2012 shall be applicable to the stone crusher unit of the petitioner. That apart, clause (d) of Order No.136 dated March 12, 2013 makes it categorically clear that the guidelines notified vide Gazette Notification No.257 dated November 23, 2012 shall be applicable for new units which will come up from the date of issuance of the said notification and not to existing ones which were installed prior to the said notification dated March 23, 2012.

On a proper interpretation of the said clause as well as the notification, read conjointly, the petitioner is justified in arguing that the no objection previously

granted to the petitioner, for running the unit which was established prior to the cut-off date as stipulated in clause (d) of the relevant order, ought to be granted. Although learned senior counsel for the respondents is justified in expressing his anguish for the school children, the norms with regard to pollution vary from time to time and what was a good ecology yesterday might not be relevant tomorrow. If the authorities go on applying such changing norms retrospectively to previously established units on the basis of new guidelines, that would itself amount to injustice. The Court has to proceed as per the law and the specific provision of Order No.136 dated March 12, 2013, which was also accepted in the impugned order, and cannot take away the legitimate rights of the petitioner which accrued to the petitioner on the date of its establishment of such stone crusher unit, irrespective of the subsequent change in norms. Moreover, the Pollution Control norms prevalent at the juncture when the stone crusher unit was established were the only yardsticks which can be looked into in that regard. Since the stone crusher unit of the petitioner is now situated admittedly beyond the said distance which will be applicable prior to the notice dated November 23, 2012, the new notice could not be applied and there was no reason for the Pollution Control Committee, by its impugned order dated August 26, 2019, to accept such contention of the petitioner and yet to refuse to grant a No Objection Certificate and consequential renewal of licence to the petitioner to run such unit.

Accordingly, WP No. 271 of 2019 is allowed on contest, thereby modifying the impugned order dated August 26, 2019 passed by the Pollution Control Committee and directing the respondent no.3 to issue a No Objection Certificate in favour of the petitioner for a period of one year to run the stone crusher unit in the subject land, in terms of prayer (A) of the present writ petition.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of usual formalities.