
(2014) 08 KL CK 0228
In the High Court Of Kerala
Case No : W.P. (C) No. 20936 of 2014

Jacob Barry

APPELLANT

Vs

District Geologist

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2015) 2 KLJ 57 : (2015) 1 KLT 935

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : P.M. Ziraj, Advocates for the Appellant; K.C. Vincent, Sr. Government Pleader, Advocates for the Respondent

Judgement

A. Muhamed Mustaque, J.—This Writ Petition is filed by holder of quarrying permit challenging Ext. P4 order whereby the petitioner request to remove the top soil of the rocks has been rejected stating that the top soil is required for filling the pit in the quarry. It appears that Geologist passed this order based on the circular issued by the Government dated 13.4.2014, in which it is stated that though separate permit is not required to remove the top soil, nevertheless, to fill the pit the top soil shall be used and only the balance can be permitted to remove from the site.

2. The learned Government Pleader would points out at Clause 15 of Ext. P1 permit and submit that in case of granite stone quarries where the pit has been formed, as a result of any mining operations, the permit holder shall provide necessary safeguards to surrounding areas in order to prevent the accident and thus filling of the pit is necessary by using top soil. It is also submitted by the learned Government Pleader that there is a provision for appeal to challenge Ext. P4 order under Rule 49 of Kerala Minor Mineral Concession Rules.

3. The learned counsel for the petitioner would rely on Rule 6 of Kerala Minor Mineral Concession Rules. It is submitted that he has already furnished the Bank guarantee for the purpose of requirement to safeguard the applied area after

quarrying and if there is any danger on account of quarrying, necessarily that should be imposed by him and on his failure the Bank guarantee can be invoked against him.

4. I am of the view that issue involved in this Writ Petition is purely question of law, whether the petitioner is entitled to transport the top soil or whether the petitioner should use the top soil for the purpose of filling the pit, therefore without relegating the petitioner to alternate remedy, the court can decide the matter. There can be any doubt as to the duty attached under the permit on the permit holder to sufficiently secure and safeguard the applied area of quarry in order to prevent the accidents. But that does not mean, it shall be done only by using top soil from the quarry. The pit can be filled either by using top soil Or by other mechanism that may be permitted. The circular mentioned as above is not form part of permit conditions. I am of the view that the petitioner is only bound by the conditions of permit. Therefore it cannot be insisted that the petitioner shall use top soil for the purpose of use in pit. It is always open for the Authorities to conduct inspection of the site and find out whether the operation of quarrying pose any danger to human beings, animals as well as vehicles; it is also the duty of the Geologist to suggest the permit holder to take immediate action or measure to prevent any threat to the human being, animals and vehicles. The condition in Ext. P1 permit are always liable to be honoured if there is any danger exist as apprehended by the Geologist, it is open for the respondent to ask the petitioner to comply with me condition in the permit to secure the surroundings of the quarrying area in order to prevent the accidents. However, that cannot be a ground to say that top soil shall be used to secure such surroundings. Such direction can be issued when exigencies demand to secure safety measures. Unless and until, the permit conditions indicate that the top soil shall always be used for filling the pit, it cannot be said that P form cannot be granted for the reason that soil requires for filling the pit. Accordingly the rejection of request in Ext. P4 is set aside. There shall be a direction to the respondent to issue P form to the petitioner. Needful shall be done within a week from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.