

(2014) 11 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No. 45118/2014 (GM-MM-S-PIL)

Jai Bhavani Parisara Raksha Seva Samsthe

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Karnataka Regulation of Stone Crushers Act, 2011 — Section 6(1)(c)

Citation : (2014) 11 KAR CK 0067

Hon'ble Judges : D.H. Waghela, C.J.; Budihal R.B., J

Bench : Division Bench

Advocate : Ravindra D.K., Advocate for the Appellant; Prathima Honnapura, HCGP, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.—The petitioner, claiming to be an association formed by the group of Kallya villagers, is stated to be actively involved in development and protection of environment, although no instance of such activity is mentioned in the petition. According to the petition, at the meeting of the ward members of Palli panchayath, the residents of Kallya and Palli villages had raised serious objections "against using powerful blasts by the granite stone mining and granite stone crusher activity." The petitioner is stated to have been aggrieved by notification dated 10.09.2013, issued by the office of the Deputy Commissioner, Udupi District, under the provisions of the Karnataka Regulation of Stone Crushers Act, 2011, whereby certain survey numbers of the Udupi District are declared as safer zones for stone crushers under the said Act. On the basis of a number of other averments, the prayer as under is made in the petition:

"Wherefore, the Petitioner humbly prays that this Hon"ble Court may be pleased to;

a) Issue an order or direction or writ in the nature of Certiorari, quash/set aside the impugned Notification bearing No. S.C.A./CR/4/2013-14, dated 10.09.2013, declaring Sy. No. 159/1, Kalya-3, in Kalya village, as Safer Zone, produced at Annexure-P issued by the Respondent No. 2. Consequently, quash the License

issued in favour of the 9th Respondent made in No. SCL 45/2013-14 dated 18.12.2013 in Form-C, issued by the Respondent No. 2, produced at Annexure-Q."

2. Admittedly, the Karnataka State Pollution Control Board (KSPCB) has, by its order dated 07.04.2013, already refused consent for operation of the stone crusher owned by respondent No. 9. It is however submitted, on oral instruction, that in spite of refusal of consent by KSPCB, respondent No. 9 is continuing with the operation of his stone crusher unit and the activity of use of explosives is also continued in the adjoining area. Those allegations are, however, not borne out by any material on record. As for the impugned notification dated 10.09.2013 declaring the notified areas as safer zones, the petitioner has relied upon a letter dated 06.03.2012 of the Palli Gram Panchayath, which is annexed to the petition as Annexure-F. Only on the basis of that letter, it was argued by learned counsel for the petitioner that there were 9 houses situated within 200 meters of a stone crushing unit, due to which the impugned notification was in violation of the provisions of Section 6(1)(c) of the Karnataka Regulation of Stone Crushers Act, 2011.

3. Examining the argument of the petitioner, it was clear and fairly conceded that the letter dated 06.03.2012 of the Gram Panchayath was in reply to an enquiry by a private person, who is not a party to the present proceeding. Even taking that letter at its face value, it reads as under:

"Sir,

Sub: Providing details of numbers of houses situated within 200 mts, 300 mts, 400 mts and 500 mts from Agasthya Crusher in Kalya Village.

Ref: Letter dated 07.02.2012 bearing EDS/RTI/CR No. 509/2011-12 of Tahasildar.

With reference to the above, as directed by the Tahasildar to provide the details of houses situated within 200, 300, 400 and 500 meters from the Agasthya Crusher sought under Right to Information Act, 2005, the said information is not available in the Panchayath Records. However, after spot verification the following information is provided.

The details of houses situated within 200, 300, 400 and 500 meters from the Agasthya Crushers of Kalya Village

With Regards"

4. The above letter cited as the sole piece of evidence to challenge the notification is obviously not enough to arrive at even a prima facie conclusion that the areas notified in the notification are within 200 to 500 meters of any house. Besides that, the information given by the Gram Panchayath with reference to the then existing crusher unit called Agasthya Crusher is related to the factual position prevailing in March 2012; whereas the impugned notification

is dated 10.09.2013 and there is nothing to relate the information contained in the letter dated 06.03.2012 to the facts prevailing at the time of the impugned notification.

5. Therefore, the legal challenge to the impugned notification dated 10.09.2013 is not substantiated by necessary and reliable facts. As for the alleged illegal activity of respondent No. 9, the petitioner does not appear to have made any complaint or representation before any of the authorities concerned. Under the circumstances, the petition is dismissed in limine with liberty to the petitioner to make appropriate representation, in case of necessity or genuine grievance.