

(2016) 11 KL CK 0076
In the High Court Of Kerala
Case No : W.P. (C) No. 31496 of 2016 (J)

K. Ibrahim

APPELLANT

Vs

Geologist, Department of Mining and Geology

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Kerala Minor Mineral Concession Rules, 2015 — Rule 10(q), Rule 106, Rule 15

Citation : (2017) 1 KLT 211

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. Babu S. Nair, Advocate, for the Petitioner; Senior Government Pleader, Sri. K.J. Manuraj, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. K. Vinod Chandran, J. - The petitioner is aggrieved with the denial of O(A) Forms for removing the overburden (ordinary earth) collected in the premises, in which the petitioner has been permitted to quarry laterite stones.

2. The petitioner was issued with Ext.P1 permit for quarrying laterite stones. The petitioner contends that after removal of laterite stones there is overburden remaining in the premises, for which there is a requirement, as is evidenced from Ext.P2. The requirement, as seen from Ext.P2, is for executing a public work and it is submitted that if the petitioner is permitted to remove the ordinary earth to the work site of the person who has been awarded the contract by Ext.P2, then, the petitioner would protect the quarry as provided in Rules 10(q) of the Kerala Minor Mineral Concession Rules, 2015 ("Rules" for short). It is also submitted that, in any event, Rule 106 provides for quarrying of earth for public works, even without a permit.

3. The learned Government Pleader, however, refutes the contention of the petitioner on the ground that Rule 15 of the Rules specifically prohibits such removal of overburden.

4. Essentially the petitioner did not carry out quarrying for a public work nor could he so do by virtue only of Sub-Rule (3) of Rule 106 of the Rules. Rule 106 (3) permits extraction of minerals for special purposes, wherein, the construction of public works like roads, canals, irrigation projects etc. requires inevitably, extraction of minor mineral. It is also the Department/Authority carrying out the public work, who is permitted to carry out quarrying without a permit issued under the Rules.

5. In the present case there is no Department/Authority impleaded and it is a private individual, a contractor whose requirement is projected to remove the overburden collected at the site, who is also not a party respondent. Be that as it may, the petitioner who obtained a quarry permit for laterite stones has to comply with the terms of the permit and the provisions of the Rules under which such permit was issued and cannot take shelter under Rule 106 of the Rules to contravene the specific provisions applicable to him.

6. The petitioner obtained a permit as per Ext.P1 for quarrying laterite stones and stacked the overburden as provided in Rule 15 of the Rules in the premises itself. The proviso to Rules 15 of the Rules also speaks of stacked overburden being used for back-filling the pits after removal of laterite stones. The petitioner's contention that the petitioner would comply with Sub Rule (q) of Rule 10, cannot also be relied on to permit removal of the overburden; which is specifically prohibited in the Rules. Sub Rule (q) of Rule 10 is with respect to the protection of the quarried area after the back-filling of the pits and that is not an alternative to the prohibition in removing the overburden specifically prohibited in Rule 15 of the Rules. The measures for protection of the quarried area under Rule 10(q) would anyway have to be complied with by the petitioner and there can be no escape from that. The said measures are also in addition to the back-filling of the pits with the overburden.

7. It is also pertinent that the petitioner has carried out quarrying without Environmental Clearance, as is provided under the Environment Impact Assessment Notifications issued by the Ministry of Forests, Environment and Climate Change; on the basis of an exemption available in the Rules of 2015. The said exemption is available only for laterite stone and not ordinary earth. The claim raised herein is in contravention of the statutory provisions and cannot be allowed. This Court does not find any reason to direct the Geologist to issue Form O(A).