(2003) 01 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 562 of 2000 and WPMP. No. 800 of 2000

K.P. Enterprises APPELLANT

Vs

The District Collector RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(4)

Citation : AIR 2004 Mad 151 : (2003) WritLR 666

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Sanjeevi, for the Appellant; P. Gunaraj, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner has prayed for the issue of a writ of certiorari calling for the records of the respondent in his

proceedings Roc.NO.2366/99/Mines-C dated 10.1.2000 and quash the same.

2. This court issued rule nisi on 23.4.2002.The respondent has been served and entered appearance through the Special Government Pleader. The

respondents ;have also filed a counter.

3. Heard Mr.V.Sanjeevi, learned counsel appearing for the writ petitioner and Mr.P.Gunaraj, learned Special Government Pleader appearing for

the respondents. The writ petition was taken up for hearing on several days and detailed arguments were advanced by Mr.Gunaraj who sought to

sustain the impugned order, while Mr.Sanjeevi, learned counsel for the petitioner advanced detailed contentions challenging the proceedings of the

respondent dated 10.1.2000.

4. Certain undisputed facts have to be set out. The writ petitioner was granted mining lease to quarry black dimensional granite Stone owned by

the State of Kerala in the lands comprised in 17/5-1, 17/7, 17/8, 17/16, Block No.37 in Nagaroor Village, Chirayin Keezhu Taluk, Trivandrum

District for a period of Twenty years. The lease deed was executed on 24.11.1997 in the form prescribed under the Kerala Minor Mineral

Concession Rules 1967. The petitioner secured a valid license in quarrying granite. The petitioner is transporting coloured dimensional black

granite to different places in the state of Tamil Nadu, Andhra Pradesh etc., after paying necessary seinerage fee to the State of Kerala with permits

issued by the Department of Mining and Geology, Trivandrum District such as bulk permit and cash memorandum in form P issued under Rule

48K of the Kerala Minor Mineral Concession Rules. M/s.Evershine Granites, Kuppam, Andhra Pradesh placed orders for supply of granite block

of 10.478 CBM, while two others namely M/s.Crystal Granites, Maharashtra and PSTS Co., Tuticorin placed orders for supply of granite blocks

measuring 4.435 CBM and 5.662 CBM and 4.498 CBM respectively. The petitioner secured bulk permit from the Department of Mining and

Geology, Kerala on 18.11.1999 to remove granite dimensional blocks measuring 24.4.73 CBM. After paying the seigniorage fee of Rs.97,892/=

the permit was issued valid between 18.12.199 to 26.12.1999. The petitioner despatched granite dimensional block measuring 10.478 CBM to

M/s.Evreshine Granites, Kuppam, Andhra Pradesh on 20.12.1999 by lorry bearing Registration No.K.A-01-8548. The petitioner handed over all

the documents prescribed, namely, Bulk Permit, cash memorandum (Form P) as well as sales tax delivery note, sales tax declaration form etc.,

which normally accompany such transport.

5. The Tahsildar, Sankari intercepted the lorry on 22.12.1999 at 7.00 a.m., near Sankari R.S. Despite the lorry driver producing the documents

the Tahsildar seized the vehicle with the granite block. On behalf of the petitioner a written representation was made on 27.12.1999 to the

respondent for release of the granite block and the lorry, while producing Cash memorandum issued in Form-P which was displaced in lorry cabin.

The respondent herein by proceedings dated 10.1.2000 imposed penalty of Rs.1,78,662/= being the cost of minerals and five times seigniorage fee on the premise that the granite has been illicitly quarried and liable to pay segniorage fee to this State under Tamil Nadu Rules.

6. It is the case of the petitioner that the Tamil Nadu Minor Mineral Concession Rules 1959 has no application. The respondent took the stand that

the lorry and the granite block will be released only on the petitioner remitting the said sum of Rs.1,78,662/=. It is contended that the Tamil Nadu

Minor Mineral Concession Rules has no application to the case on hand. Even after producing all the material documents and even after referring

the matter to the Kerala Authorities, the respondent has passed the impugned order ignoring the fact that it lacks total jurisdiction to impose the

penalty and to detain the granite block.

7. The learned counsel for the petitioner raised number of contentions contending that the respondent has no jurisdiction. The provisions of Tamil

Nadu Minor Mineral Concession Rules has no application, that the petitioner is in valid possession of the granite blocks by virtue of the lease

granted in his favour under the Kerala Minor Mineral Concession Rules, 1967, the imposition of penalty in respect of the granite block transported

in the course of inter state movement is illegal and without jurisdiction. Having verified with the Kerala authorities the respondent should have

released the granite block and lorry without delay.

8. The respondent filed a counter setting out the details of transportation of coloured granite block by the petitioner. The Tahsildar, Sankari

reported that a case has been lodged against the transportation and treated as illicit transportation by the petitioner. The petitioner''s Manager

prayed for the release of the vehicle without imposing any fine after perusing the genuineness of the documents and after getting a report from the

Department of Mining and Geology, Trivandrum. Thereafter a penalty was levied with five times seigniorage fee for alleged illicit transportation of

granite by the respondent.

9. It is admitted that the granite block is covered by a valid transport permit which is valid from 18.12.1999 to 26.12.1999. The petitioner has also

furnished all the documents to the driver of the lorry covering the consignment. It is stated that the petitioner did not produce the despatch slip as

required in Tamil Nadu Rules at the time of inspection by the Tahsildar. So, it was assumed that the transportation is illegal and illicit one. Under

Rule 8(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959 all the Vehicles used for transportation of Minor Mineral from any area

shall be in possession of the individual despatch slip for the quantity of mineral available in the vehicle at all times of transportation of the mineral by

the vehicles. It is stated that despatch slips are issued for transportation of the mineral under the Tamil Nadu Minor Mineral Concession Rules

which the Driver has failed to produce.

10. It is contended that the petitioner has transported the black granite without valid despatch slip and it is in contravention of Rule 36(5)(b) of the

Tamil Nadu Minor Mineral Concession Rules, 1959. Hence the respondent has levied penalty for illicit transport of black granite.

11. Mr.V.Sanjeevi, learned counsel appearing for the writ petitioner referred to the Tamil Nadu Minor Mineral Concession Rules and contended

that the said rule has no application, when admittedly the granite block is of Kerala origin and there is no dispute in this respect. It is also

contended that the respondent has neither jurisdiction or authority to impose any penalty or collect seigniorage fee in respect of the granite block

which is of Kerala origin and it is not as if the granite block is quarried within the State of Tamil Nadu much less illicitly. It is fairly stated by the

counsel for the petitioner as well as respondent that the granite block in question is of Kerala origin and the respondent also admits the same. It is

also admitted that this particular variety of black granite which is commonly known as Kerala granite is not available in the State of Tamil Nadu.

Though Mr.Gunaraj, learned Special Government Pleader initially contended that in the absence of despatch slip the respondent has the authority

to detain and pass the impugned order, ultimately he has to concede that the respondent has no jurisdiction and Section 21(4) of the Mines and

Mineral (Development and Regulation) Act, 1957 also will not cover the present consignment of Kerala granite.

12. The only question that arise for consideration is:-

Whether the impugned proceedings of the respondent is illegal, without jurisdiction and liable to be quashed?

13. The petitioner furnished a copy of the proceedings of license issued by the Mining and Geology, Government of Kerala granting the quarrying

lease for quarrying dimensional stone. It is true that the petitioner has got a valid quarrying license. The petitioner has also produced copy of the

agreement executed between the petitioner and the Governor of Kerala on 24th November, 1997 which enables the petitioner to quarry black

granite dimensional stones in the particular survey numbers detailed in the agreement and there is no quarrel.

14. By a bulk permit dated 18.12.1999 the Department of Mining and Geology, State of Kerala issued permit for transporting dimensional granite

stone to (i) M/s.Evershine Granites, Kuppam, Andhra Pradesh, (ii)M/s.Crystal Granites, Maharashtra and M/s.PSTS Company, Tuticorin for a

total quantity of 24.473 CBM. The consignment is covered by valid permit. The lorry number is also set out in the bulk permit which is despatched

from the quarry to Kuppam in Andhra Pradesh. By four lorries totally 24,473 CBM of black dimensional granite stones were despatched on 20th

or 26 of December 1999 as detailed in the bulk permit issued by the Department of Mining and Geology, State of Kerala.

15. The respondent has verified the issue of bulk permit with the Kerala State Authorities and the said authorities have also confirmed about the

lease of quarry and issue of permit as well as quantity by the particular lorry which is consigned to Kuppam in Andhra Pradesh.

16. The petitioner has also issued the invoice for the sale of the granite blocks. Cash memorandum dated 26.12.1999 issued by the Department of

Mining and Geology, State of Kerala was also produced before the respondent bearing No.279 valid upto 26.12.1999 in respect of the granite

block whose price has been indicated as 84,360 and its purchaser being M/ s.Evershine Granites, Kuppam, Andhra Pradesh and it is being

transported by Lorry baring Registration No.K.A.01-8548 from Trivandrum District and it is transported between 20th December 1999 to 24th

December 1999. The petitioner has also issued the delivery note as prescribed under Kerala General Sales Tax Rules prepared in favour of the

purchaser at Kuppam. The petitioner has also produced the Form 27B Declaration issued under the Kerala General Sales Tax 1963.

17. Despite the said production of these material documents, the granite blocks with the lorry has been seized and detained for no valid reason

Even in the impugned order passed by the respondent it is stated that on a reference, the Mining and Geology Department, Trivandrum confirmed the movement 24,773 CBM of Black Dimensional Granite blocks by the petitioner vide movement permit dated 18.12.1999 and the royalty per

cubic meter at Rs.4000/= has been paid to Kerala State. Cash Memorandum in Form P also has been produced by the petitioner. Even after

referring to that the respondent has proceeded as if the granite block is of Tamil Nadu Origin when admittedly in the entire State of Tamil Nadu

even as admitted by the counsel or respondent such a kind or variety of granite is not available. It is admitted that it is a Kerala State origin. Even

assuming for the purpose of argument that the Driver has not produced Form P issued by the Kerala Authorities, there are other documents to

show that it is transported from Kerala State to Kupam, in Andhra Pradesh to the particular consignee and material documents have been placed

before the respondent as well. Even From P also was produced immediately. Despite that, the respondent assumed that the transportation is illegal

or that it requires a despatch slip issued under the Tamil Nadu Minor Mineral Concession Rules, which is a misconception. The documents

produced by the petitioner would show that the petitioner is a grantee of lease by the State of Kerala who was permitted to quarry, given permit

for the movement of the granite blocks and other documents with respect to the sale by the petitioner to the consignee in Andhra Pradesh. Despite

the same, the respondent has proceeded as if that there has been violation of Rule 36-A(3), 36-A(5) and 36(5)(b) of the Tamil Nadu Minor

Mineral Concession Rules, 1959.

18. Rule 1 (2), particularly ""preliminary"" makes it clear that Tamil Nadu Minor Mineral Concession Rules have no application to the consignment

of Kerala granite being transported from Trivandum to Kuppam an inter-state movement.

19. The preliminary Rule reads thus:-

1. PRELIMINARY:- (1) These rules may be called lthe Tamil Nadu Minor Mineral Concession Rules, 1959.

(2) They extend to the whole of the State of Tamil Nadu.

(3) They shall apply to all the lands in the State of Tamil Nadu including the lands in the estates taken by the State Government under the Tamil

Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI of 1948).

20. The respondent has acted without authority is seizing the granite and thereafter directing the petitioner to pay a seigniorage fee and penalty at

five times the normal seigniorage fee. Under the Rules, unless the granite is of Tamil Nadu origin, the respondent has no authority to levy the

seigniorage fee penalty as has been imposed on the facts of the case. The entire action is without authority and jurisdiction.

21. Concedingly, it is an Inter-State movement and it carried valid documents. The consignment of granite from Trivandrum to Kuppam in Andhra

Pradesh was accompanied by all the requisite permits as prescribed by the Kerala authorities. The respondent has also no doubt in its mind that

block is of Kerala origin. Yet, the respondent has ordered payment of seigniorage fee and a penallty of 5 times as if there is a violation of Tamil

Nadu Minor Mineral Concession Rules in particular Rule 36-A(3), 36-A(5) and 36-5(b). It is a misconception of the provisions of the Tamil Nadu

Minor Mineral Concession Rules. Though it is admitted that the granite block is of Kerala origin and it is consigned to a consignee in Andhra

Pradesh, it is being transported through Tamil Nadu to a dealer in Andhra Pradesh, being an Inter-State movement, it is too extraordinary for the

respondent to assume that the Tamil Nadu Minor Mineral Concession Rules applies and enforce seigniorage fee and penalty as well.

22. The respondent has also corresponded with the Keral authorities who also confirmed the factual position. The provisions of the Tamil Nadu

Minor Mineral Concession Rules has no application at all. The respondent has acted without jurisdiction. That apart, it is an Inter-State movement.

23. Section 21(4) of the Mines and Mineral (Development and Regulation) Act, 1957 also will not apply nor it confers power on the respondent

and therefore the action is without jurisdiction. u/s 15 of the Mines and Mineral (Regulation and Development) Act, 1957 the State has been

conferred with a power to make Rules in respect of Minor Minerals for regulating the grant of quarry lease, mining lease and other mineral

concessions in respect of mining minerals and for purposes connected therewith in the state Section 15(1)(a) also enables the State to provide for

all or any of the matters enumerated in the said Sub section. The various sub clauses namely Section 15(1)(a) to (o) will not enable the State

Government to frame Rules in respect of minerals whose origin is admittedly from the other State and what is contemplated under the Rules is in respect of the quarries or minerals or granites quarried within the State there could be a regulation. The Tamil Nadu Rules has no application and

Tamil Nadu State has no authority or right to impose or collect royalty in respect of black granite which is admittedly of Kerala origin. Nor, penalty

could be levied. u/s 13, the Central government has the authority to frame rules regulating grant of prospecting license and mining leases.

24. In State of Tamil Nadu Vs. M.P.P. Kavery Chetty, : while examining the scope of Section 15 of the Mining and Mineral (Regulation and

Development) Act, 1957, the Apex Court held thus:-

21. The said Act is enacted to provide for the regulation of mines and the development of minerals under the control of the Union. Section 2 of the

said Act declares that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development

of minerals to the extent provided in the said Act. Section 13 empowers the Central Government to make rules for regulating the grant of

prospecting licences and mineral leases in respect of minerals and for purposes connected therewith. Sub-section (1) of Section 15 empowers the

State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals

and for purposes connected therewith. Sub-section (1-A) of Section 15 states that such rules may provide for the matters set out therein, namely,

the person by whom and the manner in which an application for a quarry lease, mining lease and the like may be made; the fees to be paid therefor;

the time and the form in which the application is to be made; the matters which are to be considered where applications in respect of the same land

are received on the same day; the terms and conditions on which leases may be granted or regulated; the procedure in this behalf; the facilities to

be afforded to lease-holders; the fixation and collection of rent and other charges and the time within which they are payable; the protection of the

rights of third parties; the protection of flora; the manner in which leases may be transferred; the construction, maintenance and use of roads,

power transmission lines, etc. on the land; the form of registers to be maintained; reports and statements to be submitted and to whom; and the

revision of any order passed by any authority under the said Rules. Clause (o) of sub-section (1-A) reads ""any other matter which is to be or may be prescribed"". Section 18 of the said Act states that it shall be the duty of the Central Government to take all such steps as may be necessary for

the conservation and systematic development of the environment by preventing or controlling any pollution which may be caused by prospecting or

mining operations.

23. It is difficult to see how granite resources can be protected by controlling the sale of granite after its excavation and fixing the minimum price

thereof.

24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been

excavated. The power of the State Government, as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The

power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (o) of sub-section (1-A) of Section 15. This

clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to

regulate the sale of already mined minerals.

25. Section 21(4) relied upon by the respondent has no application at all, nor it could be relied upon to the facts of the present case. In the

circumstances, the order impugned deserves to be quashed and accordingly it is quashed.

26. The writ petition is allowed and there will be a direction to release the bank guarantee furnished for release of the vehicle and granite block.

The respondent shall release the bank guarantee within four weeks from the date of communication of this order. Consequently, connected WMP

is closed. No costs.