

(2014) 09 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (Civil) Nos. 5921, 5936, 5969, 5973, 6014, 6017, 6021, 6022, 6023, 6025, 6026, 6028, 6037, 6040, 6041, 6045, 6047, 6057, 6058, 6061, 6062, 6063, 6064, 6065, 6067, 6079, 6095, 6099, 6100, 6101, 6106, 6161, 6162, 6165, 6166, 6169, 6170, 6172,

Kushwaha Clay Products

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 162, 253
Environment (Protection) Act, 1986 — Section 3(2)(v)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 2015 Jhar 53 : (2015) 1 AJR 596 : (2015) 5 FLT 223

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Anurag Kumar, CGC-cum-ASGI, Shankar Lal Agarwal, Advocate for the Appellant; Ajit Kumar, AAG, Rajesh Kumar, G.P.-V and A.K. Pandey, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Seeking quashing of Notification dated 03.04.2013 issued by the Department of Environment and Forests, fixing "scrutiny fee" for granting environmental clearance by the State Level Environment Impact Assessment Authority (SEIAA) and quashing of Minutes of Meeting dated 07.05.2013 whereby SEIAA has fixed its own guidelines, the petitioners have approached this Court by filing the present Batch of writ petitions. A further prayer for directing the respondents to issue permit under Rule 31 of the Jharkhand minor mineral concession Rules, 2004 to the brick kiln owners has also been made in the writ petitions.

2. Since a common question of law is involved in all the writ petitions and Mr. Shankar Lal Agarwal, the learned counsel appearing for the petitioner(s) in all the writ petitions advanced common argument, with the consent of the parties, all the writ petitions are being disposed of by this common order. For the sake of

convenience, the facts stated in W.P (C) No. 5921 of 2013 are stated thus;

3. The petitioner is manufacturing brick kiln in its unit situated in the district of East Singhbhum. For establishing a brick kiln unit, permission under Rule 31 of the Jharkhand Minor Mineral Concession Rules is required. Before 1999, brick manufacturers were permitted to install mobile chimneys however, vide notification dated 05.10.1999 the Central Government prohibited the mobile chimney and made provision for installing fixed chimneys. The petitioner was granted permission under Rule- 31 of the Jharkhand Mineral Concession Rules, 2004. After the direction of the Hon''ble Supreme Court whereunder requirement of environmental clearance was made mandatory even for minor minerals, though the State Government was required to frame Rules however, without framing any Rule, the Government of Jharkhand issued Notification dated 03.04.2013 whereunder the industries are required to apply for grant of environmental clearance in a prescribed format along with "scrutiny fee".

4. A counter- affidavit on behalf of the State Level Environment Impact Assessment Authority, Ranchi (respondent No. 2) has been filed stating that vide order dated 27.12.2012 of the Ministry of Environment and Forest, the State Level Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC) have been constituted. Order dated 27.12.2012 was issued in view of order dated 27.12.2012 in I.A. No. 12-13 of 2011 in SLP (C) No. 19628-29 of 2009 passed by the Hon''ble Supreme Court. The Department of Environment and Forests, Government of Jharkhand also issued Notification Dated 03.04.2013 to facilitate the functioning of SEIAA and SEAC. The Ministry of Environment and Forest vide letter dated 18.05.2012 directed that all Mining projects and Minor Minerals including their renewals, required prior environmental clearance. The Jharkhand Pradesh Brick Manufactures Association and Jharkhand "Iit" Nirmata Sangh had given representations for lowering of the scrutiny fee which was discussed in the joint meeting of SEAC and SEIAA on 24.09.2013. The scrutiny fee has been levied for meeting the expenses incurred in sitting fees, TA/DA expenses for the members of SEIAA and SEAC, etc. In other States like, M.P., U.P., Maharashtra also guidelines have been framed and scrutiny fee has been levied for processing the application.

5. Mr. Shankar Lal Agarwal, the learned counsel appearing for the petitioner(s) submitted that the decision taken by SEIAA in its meeting held on 07.05.2013 and Notification dated 03.04.2013 by the respondent- State are in the teeth of Section 15 of the MMDR Act and also in contravention to Section 3(2)(v) of the Environmental (Protection) Rules, 1986. It is submitted that the Environmental (Protection) Act, 1986 has been enacted by the Parliament under Article 253 read with Entry- 14 of List- I of Seventh Schedule of the Constitution of India and since SEIAA is the implementing authority, it cannot frame a guideline and the respondent- State cannot require deposit of "scrutiny fee". It is further submitted that the power conferred upon the State Government under Section 15 of the MMDR Act is only confined to fixing" and calculating royalty in respect

of minor minerals and under Section 15 of the MMDR Act, even the State Government cannot frame any Rule relating to the environmental issue or requiring from the applicants to deposit "scrutiny fee". Lastly, it is submitted that a tax or fee can be imposed only under an authority of law and by a notification, tax or fee cannot be imposed by the State Government/Authority. He relies on a decision in "Attorney General Vs. Built United Durg Limited", reported in (1922) 127 LT 822. It is further submitted that though in the neighbouring State of Orissa, the scrutiny fee of Rs. 5,000/- is being charged from the applicants, in the State of Jharkhand vide Notification dated 03.04.2013 scrutiny fee for projects upto Rs. 5 crores has been fixed at Rs. 1 Lac which is exorbitant, arbitrary and liable to be quashed.

6. Mr. Ajit Kumar, learned AAG assisted by Mr. Rajesh Kumar, G.P.-V submitted that the SEIAA, Jharkhand in its meeting dated 07.05.2013 deliberated upon the simplification of procedure for environmental clearance and pursuant thereof necessary guideline was formulated. SEIAA has framed separate guidelines of scrutiny of Category A-B proposals and the decision dated 07.05.2013 is only temporary in nature. In the meeting held on 07.05.2013, no decision was taken with respect to mining of brick earth and the MoEF issued office memorandum dated 24.06.2013 which was adopted by the SEIAA in its meeting held on 24.09.2013. The Department of Environment and Forests, Government of Jharkhand also notified on 03.04.2013 the decisions taken for facilitating the functioning of SEAC and SEIAA. In these facts, it is submitted that the guidelines framed by SEIAA under in its meeting held on 07.05.2013 is valid and does not require any interference by this Court. It is further submitted that since the applicants are required to borne expenses for processing their applications, the applicants cannot challenge charging of scrutiny fee for processing their applications.

7. I have carefully considered the submission of the learned counsel for the parties and perused the documents on record.

8. From the materials on record, it is apparent that vide Notification dated 27.12.2012 of MoEF, SEIAA in the State of Jharkhand was constituted. The Department of Environment and Forests, Government of Jharkhand issued Notification dated 03.04.2013 for facilitating the working of SEIAA. The guidelines contained in Minutes of Meeting dated 07.05.2013 is only temporary in nature. It has been brought on record that such guidelines have been formulated after considering the guidelines framed by the State of M.P., U.P. and Maharashtra. I am of the opinion that the guidelines contained in Minutes of Meeting dated 07.05.2013 do not suffer from any illegality or jurisdictional error.

9. Charging of scrutiny fee has been challenged on the ground that in absence of a law enacted in this regard, the scrutiny fee cannot be charged by the State Government. It is common ground that in different departments and even in the educational institutions application fee is charged from the applicants. In the present case, the charge collected from the applicants has been termed "scrutiny

fee", which is in lieu of the expenses incurred for processing the applications of the petitioners. I am of the opinion that the petitioners cannot contend that no application fee should be charged from them for processing their application by SEIAA.

10. In Bangalore Development Authority Vs. The Air Craft Employees Cooperative Society Ltd. and Others, , the power of the Bangalore Development Authority in levying charges for sanctioning new private lay-out and for expenditure incurred towards execution of schemes/works for augmentation of amenities within Bangalore metropolitan area, was challenged. The Hon"ble Supreme Court observed that, due to unprecedented increase in the population of Bangalore city and the policy decision taken by the State Government to encourage housing building societies, BDA was obliged to take effective measures to improve the civic amenities like water supply, electricity, roads, transportation, etc. and for this it became necessary to augment the resources by BDA itself or through other State Agencies/Instrumentalities by making suitable contribution.

11. In Jantia Hill Truck Owners Association Vs. Shailang Area Coal Dealer and Truck Owner Association and Others, , the question whether levy/calculation of fee by issuing executive order was permissible, came up for consideration before the Hon"ble Supreme Court. The provisions of the Motor Vehicle Act, 1988 mandate that the unladen weight and laden weight must be determined and for that purpose Rules are required to be framed. The Hon"ble Supreme Court held that, Article 162 of the Constitution of India in unequivocal terms provides that the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make law. It was further observed that, "it is well settled principle of law that even in a case where the statute provides for certain things to be done subject to Rules, any action taken without framing the Rules would not render that action invalid". The Hon"ble Supreme Court held that the State for giving effect to the provisions of the Motor Vehicle Act, 1988 may take upon itself the burden of providing for weigh-bridges and collection of fees, etc.

12. In view of the aforesaid discussion, I am of the view that even though the specific rule has not been framed for charging scrutiny fee from the petitioners, the scrutiny fee can be validly levied for processing the applications of the petitioners. Referring to the contention that charging of Rs. 1 Lac as scrutiny fee from the petitioners is arbitrary and exorbitant, I find that no material has been produced by the petitioners on record, to reach to a conclusion that the scrutiny fee charged by the State of Jharkhand is exorbitant and arbitrary. Moreover, vide Notification dated 21.12.2013, the scrutiny fee has been reduced to Rs. 50,000/- from Rs. 1 Lac. However, if the petitioners feel that charging of Rs. 50,000/- as scrutiny fee is exorbitant, it is open to the petitioners to approach the State Government by making representation in this regard.

In the result, I find no merit in these writ petitions and according all the writ petitions are dismissed.