

(1997) 04 MAD CK 0033
In the Madras High Court

M. Prasad

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-04-1997

Acts Referred:

Citation : (1998) 1 MLJ 280

Hon'ble Judges : Sathasivam, J

Bench : Division Bench

Judgement

Sathasivam, J.—The petitioner has approached this Court to issue a writ of certiorarified mandamus calling for the records of the

proceedings of G.O. (3D) No. 204 Industries (MME-1) Department, dated 22.9.1995 of the first respondent, quash the same and direct the first

respondent to consider all the applications together for the grant of river sand quarry lease in Ramanjeri Village, Tiruvallur Taluk, Chengai-MGR

District measuring to an extent of 10.30.0 hect-ares in Survey No. 1412.

2. The case of the petitioner as seen from the affida-vit filed in support of the writ petition is briefly stated hereunder:

The petitioner has applied for mining lease for quarrying river sand in Ramanjeri Village, Tiruvallur Taluk, Chengai-MGR District over an extent of

56.35 hectares in Survey No. 1412. The said application fee for the grant of lease was made on 29.7.1995 to the Secretary to Government, Fort

St. George, Madras-9. The necessary application fee of Rs. 1.500 has also been duly remitted on the very same day by way of demand draft

drawn on State Bank of India, Kancheepuram. The said application was made under Rule 39 of the Tamil Nadu Minor Mineral Con-cession

Rules, 1959. The validity of the said Rule has been upheld by the Apex Court in

Premium Granites and Another Vs. State of Tamil Nadu and

Others, . The Supreme Court of India, in the said judgment as well as in the subsequent decisions has clearly laid down that Rule 39 of the Rules is

a special provision which deals with a situation wherein the interest of Mineral development and in Public interest it is necessary to grant or renew

the lease or allow the working of any quarry on terms and conditions different from those laid down under the Rules.

3. It is further contended that in respect of the area for which it had applied for river sand quarry in Ramanjeri Village, the fourth respondent herein

has also made an application. The first respondent had taken up the application of the fourth respondent and has granted lease in his favour by the

impugned G.O. (3D) No. 204 Industries (MME-1) Department, dated 22.9.1995 for an extent of 10.30.0 hectares in Survey No. 1412. Nothing

has been communicated to the petitioner in respect of his application dated 29.7.1995. Aggrieved against which the petitioner has preferred the

present writ petition. According to the petitioner, the impugned order of the first respondent is utter disregard to the guide lines prescribed by the

Apex Court well as this Court in various decisions. It is also arbitrary, illegal and whimsical in the grant has been made by considering the

application of the forthe respondent alone without considering at the same time the merits and demerits of any other application pending at the

relevant point of time. Even assuming that for the purpose of argument that Rule 39 of the said Rules does not prescribe any proce-dure for the

purpose of considering the application made therein, the first respondent should have adopted fair procedure in disposing of the application

pending in respect of the same area. The impugned order of the first respondent is opposed to the recent decision of this Court rendered in W.P.

No. 8492 of 1995 dated 4.9.1995 as confirmed in Writ Appeal Nos. 1089 and 1090 of 1995 dated 1.7.11.1995.

4. The first respondent has filed a counter affidavit disputing various averments made by the petitioner. It is contended that the fourth respondent

had applied for the grant of quarry lease for quarrying river sand in Survey No. 1412 of Ramancheri Village, Tiruvallur Taluk Chengai MGR

District on 21.7.1995 under Rule 39 of the Rules. The Superintending Engineer, Public Works Department, Kancheepuram in his letter dated

14.8.1995 has given his concurrence for the grant of quarry lease for quarrying sand in the above area. His application was forwarded to the

Principal Secretary to Government, Industries Department, Madras through the Commissioner of Geology and Mining, Guindy, Madras-32, dated

16.8.1995 for consideration and for passing suitable orders. In the meanwhile, the petitioner and one A. Ammukutty of Budur Village,

Madurantakam Taluk have applied for the grant of quarry lease for river sand in the above are on 29.7.1995 and 14.8.1995 respectively. These

applications have also been considered and forwarded to the Secretary to Government, Industries Department, Madras-9 through the

Commissioner of Geol-ogy and Mining, Madras-32, dated 21.8.1995. Among the three applications the Government have considered the grant of

lease to Thiru M. Murali (4th respondent) Sevvapet village and accordingly passed the impugned order dated 22.9.1995, granting quarry lease for

sand over an extent of 30,000 hectares in Survey No. 1412 of Ramancheri Village, Tiruvallur Taluk with usual conditions therein. It is also

contended that the first respondent has passed the impugned order based on rules and legally valid under the provision of Rule 39 of the said

Rules. The High Level Committee has not recommended the grant of quarry lease to anybody of any particular applicant. The Government after

careful consideration, consid-ering the merits and demerits of all the applicants, the application of Thiru M. Murali (R. 4) for the grant of lease of

the sand quarry was considered for the grant of quarry lease for a period of five years. Hence, the contrary averments made by the petitioner is in

correct and untenable.

5. The fourth respondent has also filed a counteraffidavit almost similar to the counter affidavit of the first respondent. It is contended that the

Government have deleted Rule 39 of the Rules in G.O. Ms. No. 91, Industries (M.M. B) Department, dated 27.6.1996. Once the rule is

amended all the applications filed under the said Rule shall abate automatically. Here by deleting Rule 39 with effect from 27.6.1996, the alleged

application of the petitioner dated 29.7.1995 got abated automatically. In those circumstance, according to the fourth respondent the present writ

petition is not maintainable. The same has become infructuous in view of deletion of Rule 39. Now, tendercum-auction system has been introduced

for granting quarry lease in respect of the Government quarry lands. In those circumstance, the writ petition is liable to be dismissed.

6. In the light of the above pleadings, I have heard Mr. R. Thiyagarajan, learned senior counsel for the petitioner, Mr. K. Balasubramanian, learned

Additional Government Pleader for respondents 1 to 3 and Mr. K. Ramakrishna Reddy for fourth respondent.

7. Mr. R. Thiyagarajan, learned senior counsel raised the following two submissions:

(i) Inasmuch as on the date of the impugned order in favour of the 4th respondent the application filed by the petitioner with the recommendation of the District Collector was with the Government, failure to consider the similar application applied for the very same land vitiate the entire proceedings:

(ii) The Government fail to consider the two important factors viz., Mineral Development and public interest. In the absence of any conclusion by the Government that the grant in favour of 4th respondent is in the interest of Mineral Development and in the Public interest the impugned order cannot be sustained.

7A. In support of the above propositions, he has re-lied on the following decisions:

(i) Order in Tamil Nadu Minerals Limited v. P. Ramachandran and Ors. W.A. No. 1283 of 1995, etc. dated 11.11.1994;

(ii) Order in P. Ponnusamy v. State of Tamil Nadu and Ors. S.L. PNos. 14091-14102 of 1994, dated 25.11.1994;

(iii) Order in Vijay Mines and Minerals, Tirupur v. State of Tamil Nadu and Ors. W.P. Nos. 19868 of 1994 etc. dated 17.2.1995.

(iv) Order in M/s. Shyba Granites v. Secretary to Government of Tamil Nadu and another, W.P. No. 8493 of 1995, dated 4.9.1995;

(v) Order in Minerals and Mineral Product of India v. Government of Tamil Nadu and Ors. S. LP. No. 1180 of 1991 dated 21.8.1995; and

(vi) Order in S. Baskaran v. The Secretary to Government of Tamil Nadu and Anr. W.A. Nos. 1026 of 1995 etc., dated 8.11.1995.

8. On the other hand Mr. K. Ramakrishna Reddy rep-resenting the fourth respondent submitted that in view of deletion of Rule 39 from the Statue

with effect from 27.6.1986, the application of the petitioner dated 29.7.1995 got

abated automatically, nothing survives in the above writ petition.

He also denied on a decision of this Court reported in C. Idumban v. Collector, Tiruchirapalli District and Ors. ILR (1994) 3 Mad. 792.

9. I have carefully considered the rival submissions.

10. The fourth respondent had applied for sand quarry lease in respect of 56.35.0 hectares in Survey No. 1412 of Ramancheri Village, Tiruvallur

Taluk, Chengai MGR District on 21.7.1995. On 28.7.1995 High Level Committee inspected and given a report. On 29.7.1995 the petitioner had

also applied for the same Survey No. 1412 under Rule 39 for sand quarry lease. On 14.8.1995, the Superintending Engineer, Public Works

Department, Kancheepuram gave a concurrence to the grant of lease in favour of the fourth respondent application. On 11.8.1995, the District

Collector forwarded the fourth respondent's application to the Secretary, Industries Department. The petitioner's application was also forwarded

to the Secretary, Industries Department on 21.8.1995. The impugned order granting lease to the fourth respondent in respect of 10.00.00 hectares

was granted by the first respondent on 22.9.1995. The above factual position has been admitted by both sides. In those circumstance, the learned

senior counsel for the petitioner even though there is no procedure prescribed under Rule 39 how the application has to be processed in as much

as on the date of the grant the application of the petitioner after process and recommendation by the lower authorities was forwarded to the

Secretary, Industries Department. On 21.8.1995, the petitioner's application was forwarded to the first respondent whereas the impugned

Government order granting lease in favour of the fourth respondent was passed on 22.9.1995. It is the contention of the learned senior counsel,

even in the absence of procedure for considering the application made therein, the first respondent should have adopted fair procedure in

disposing of the application pending in respect of the same area. Even though on the date of the grant the petitioner's application was very well

with the Government. The perusal of the impugned order clearly shows that except the fourth respondent's application the Government have not

considered other applications, even though they were available on such date. In the preamble of the impugned order the first respondent has

referred to only the application of the fourth respondent dated 21.7.1995, letter

from the District Collector, dated 16.8.1995, Minutes of the inspection by the High Level Committee, dated 28.7.1995 that too with regard to 4th respondent. To my verification, I do not find any such consideration by the first respondent in respect of the applications made by others than the fourth respondent. 11. In those circumstance, let us consider the decisions referred to by the learned senior counsel in this regard. No doubt, in Writ Appeal No. 1283 of 1994 etc., dated 11.11.1993, popularly called as P. Ramachandran's case, the Division Bench of this Court has held that:

Thus, Rule 39 gives power to the State Government to grant mining lease in furtherance of the cause of mineral development and in public interest, but it does not confer any right on the persons to seek mining lease under Rule 39 of the Rule... As the discretion has to be exercised in furtherance of the cause of mineral development and in public interest, it will be open to the State Government, if those two interest are to be served, to consider the application but it cannot be held that as a matter of course, an applicant will have a right to have his application considered.

12. After the above Division Bench decision, the Apex Court in SLP Nos. 14091-14102 of 1994 dated 25.11.1994 popularly called as P.

Ponnusamy's case, has observed thus:

In view of the same it is obvious that any person who satisfies the requirements of Rule 39 or falls within the four corners of that rule, would be entitled to seek an order of the type mentioned therein.

It is also seen that before the Supreme Court the learned Counsel for State of Tamil Nadu has stated that:

That State of Tamil Nadu would consider any application made by the petitioner or any other person who is found to be qualified and who

answers the requirements of Rule 39 to be considered for grant of the benefit under Clause (a) or (b) of Rule 39, on relevant considerations.

The above statement has been recorded by the Hon'ble Judges in the said decision.

13. In a batch of writ petitions viz., W.P. Nos. 19868 of 1994 etc., dated 17.2.1995, Kanakaraj, J. had an occasion to deal with a similar

situation. The learned Judge has referred to P. Ramachandran's case W.P. No. 1283 of 1994 dated 11.11.1994, Premium Granites and Another

Vs. State of Tamil Nadu and Others, , and the decision of the Supreme Court in SLP Nos. 14091-14102 of 1994 dated 25.11.1994. After

considering all the above decisions, the learned Judge came to the conclusion that the ratio of the first Division Bench judgment rendered in W.A.

No. 1283 of 1994 dated 11.11.94 has to be understood only in the light of the Supreme Court in S. LP. Nos. 14091-14102 of 1994 dated

25.11.1994. After once again analysing the above decisions, I am in entire agreement with the view expressed by Kanakaraj, J. in the said

decision, since the Apex Court in Premium Granites case expressed that:

the Government will be fair to all the applicants so long as the conditions referred to in Rule 39 are satisfied.

The learned Judge has also prescribed to consider six points while disposing of the applications filed under Rule 39, and the same are extracted

hereunder:

In each case the Government must consider: Firstly, whether in the interest of mineral devel-opment the power under Rule 39 should be exercised.

Secondly, the Government must consider whether public interest also is subserved in the grant of such a lease.

Thirdly, the Government must act in a fair and reasonable manner without discriminating between--one party and another who are similarly

situated.

Fourthly, they must record reasons for their order. The Government cannot reject the applications on the ground that the petitioners had not

invoked any other Rule for the grant of lease. These in my opinion are the considerations which the Government should undertake before dealing

with any application under Rule 39.

Lastly, the Government should dispose of the applications within a reasonable time.

I am of the view that the same are well considered directions for disposing of the applications filed under Rule 39.

14. In Writ Petition Nos. 8492 and 8493 of 1995 dated 4.9.1995, Jayasimha Babu, J. has also taken the same view, in view of the decision of the

Apex Court in Premium Granites AIR 1994 S.C. 2233. After considering the factual position and legal position in the case, after quashing the

impugned order therein the learned Judge directed the Government to consider

the claim of the petitioner therein as well as the second respondent for the grant of quarry lease over the area for which both the parties are the applicants. The learned Judge has also directed that if there are other applications which have been processed and are ready for considering by the time these applications are taken up consideration, it is open to the Government to consider the applications as well. The order of Jayasimha Babu, J. rendered in the above cases dated 4.9.1995 have been taken up in an appeal before the Division Bench in Writ Appeals Nos. 1026, 1089 and 1090 of 1995. The Division Bench consisting of the Hon'ble Chief Justice and Justice Raju by order dated 8.11.1995 have observed thus:

Hence, we are of the view that exclusion of the application of the writ petitioner from consideration, when the application of the second respondent was considered was neither proper nor legal and was opposed to the principles of fairplay and justice.

In conclusion, since at the relevant point of time only the application of the petitioner and second respondent and three others, were found in the proceedings and were processed together upto a certain stage, the learned Judges were of the view that the direction should have been only to consider the applications of the writ petitioners and the second respondent and three others that were pending at the time when the application of the second respondent alone was considered. In this respect the Division Bench set aside the direction as to the consideration of other applications other than the referred to above. With this modification the Division Bench confirmed the order of Jayasimha Babu, J., dated 4.9.1995.

15. In view of the decisions referred above, from this Court as well as the Apex Court, I am of the firm opinion that in order to fulfil the principles of fairplay and justice, it is but proper that the Government have to consider the applications which have been processed and pending on the date of the consideration together. In the case on hand, on the date of consideration of the fourth respondent's application, the application filed by the petitioner after recommendation by the competent authorities reached the Government on 21.8.1995. In other words, the processed application of the petitioner was very well available for consideration on the date of the order (22.9.1995) passed by the Government in favour of the fourth respondent. In these circumstances, the contention that the failure vitiated the

entire proceedings is well-founded. In this respect, it is unfortunate that the de-defendent of the counter affidavit filed on behalf of respondents 1 to 3 in paragraph 8 made the following statement:

The High Level Committee has not reCommended the grant of quarry lease to anybody or any particular applicant. The Government after careful consideration, considering the merits and demerits of all the applicants, the application of Thiru. M. Murali was considered for a period of five years.

In the absence of any reference in the preamble portion of the impugned order, (I have already mentioned that except the fourth respondent's application there is no reference), the counter affidavit stating that: the Government considered all the applications is factually incorrect. The 1st respondent has not taken any care to verify the correct factual position and mechanically signed the counteraffidavit.

16. The second contention of the learned senior counsel is even on merits the Government have not considered the two important aspects viz., Mineral Development and Public Interest, while granting lease in favour of the fourth respondent in the impugned order. In Ponnuswamy's case the Apex Court has not reiterated the Government, have to satisfy both the above conditions while granting lease under Rule 39. In our case, no doubt there is a recommendation by the High Level Committee. However, the perusal of the impugned order does not disclose whether the Government have considered the two important aspects before passing an order in favour of the fourth respondent. The mere repetition of the report of the High Level Committee may not be sufficient compliance as stated by the Supreme Court with regard to Rule 39. Hence, the second contention of the learned senior counsel is also well-founded and acceptable.

17. Mr. K. Ramkrishna Reddy, while pointing out the factual position viz., deletion of Rule 39 from the Statue Book with effect from 29.6.1996 contended that the alleged application of the petitioner dated 29.7.1995 got abated automatically. It is true that by G.O. Ms. No. 91, Industries (M.M. B) Department, dated 27.6.1996, the first respondent has deleted Rule 39 of the Tamil Nadu Mines and Minerals Concession Rules, 1959.

18. However, I make it clear that we are concerned with the validity of the

impugned order dated 22.9.1995. On that date Rule 39 was very well in existence in the Statue Book. In those circumstance, in view of the various decisions referred above, the impugned order cannot be sustained and accordingly quashed.

19. The second prayer of the writ petition is to direct the first respondent to consider all the applications together for the grant of river sand quarry

lease in Ramancheri Village in Survey No. 1412. In as much as Rule 39 has already been deleted with effect from 27.6.1996, it is not possible for

this Court to issue direction to consider all the applications including the petitioner and the fourth respondent and dispose of the same in the light of

Rule 39. In this regard the Division Bench decision reported in C. Idumban v. Collector Tiruchirappalli District and Ors. ILR (1994) 3 Mad. 792,

is useful for our consideration. In that case preferential right to certain labour contract Society was claimed in the grant of lease under Rule 8(1)(c)

of the Rules. As per the said Rule, the Collector has to give preference to the Labour Contract Societies. In that case, meanwhile, the Government

by notification amended the Tamil Nadu Mines and Mineral Concession Rules, 1959. As per the said amendment Rule 8 has been substituted by

the a new rule which provides for disposing of the quarry only by calling for tenders. In those circumstance, the Division Bench in that case as

observed thus:

The applications filed by the Labour Contract Co-op society for the quarries situated in S.F. No. 123/2, Part II, 123/2 part III will stand abated,

because and further the mode of disposing of the quarries has also been altered, as under the Rules in force now, the quarries can be disposed of

only by way of calling for tenders.

In view of the above legal position in the absence of Rule 39 as on date in the statue Book, it is not possible for this Court, to issue mandamus to

consider all the applications with reference to Rule 39. It is brought to my notice that now tendercum auction system has been introduced for

granting quarry lease in respect Government quarry lands. In the light of the present Rules, it is open to the petitioner as well as to the fourth

respondent to pursue their respective applications and if any such attempt is made, the Government or the competent authorities are hereby

directed to consider and dispose of the same expeditiously as per the Rules in

existence. 20. Net result, the writ petition is allowed only to the extent indicated above. In the circumstances of the case, there shall be no order as to costs.