
(2016) 02 MAD CK 0087

In the Madras High Court

Case No : Writ Petition (MD) No. 2279 of 2016 and W.M.P.(MD) Nos. 2004 and 2005 of 2016

M. Sekar

APPELLANT

Vs

The District Collector, Ramanathapuram and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 02 MAD CK 0087

Hon'ble Judges : S. Manikumar and C.T. Selvam, JJ.

Bench : Division Bench

Advocate : R. Anand, for the Appellant; A.K. Baskarapandian, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—1. Being aggrieved by the impugned proceedings in Roc. No. 505/EvaA/2013 dated 20.01.2016, by which, the District Collector, Ramanathapuram, has granted permission to the 4th respondent, for removal of 4500 cubic metres of sand, from Survey Nos. 407, 434, 435, 460 and 461, Manimutharu, Govindhamangalam Panchayat, R.S. Mangalam Panchayat Union, Ramanathapuram District, for the purpose of construction of a bridge, over the Manimutharu river, under PMGSY-VIII Scheme, valued at 2.15 crores, the present public interest writ petition, has been filed, contending that the impugned proceeding is contrary to the provisions of the Tamil Nadu Minor and Mineral Concession Rules, 1959, (hereinafter referred to as, "the Rules") in particular, to rule 38-A of the Rules, as well as the decision of the Hon'ble Supreme Court in State of Tamil Nadu v. P. Krishnamurthy, reported in , (2006) 4 SCC 517.

2. Attention of this Court, was also invited to rule 15 of the Rules, which deals with quarrying or removal of sand in certain river beds.

3. On the earlier occasion, when the matter came up for hearing, by inviting the

attention of this Court, to rule 7 of the Rules, it was the submission of Mr. A.K. Baskarapandian, learned Special Government Pleader, appearing for the official respondents 1 to 3, and the submission of Mr. S. Chellapandian, learned counsel for the 4th respondent/Contractor, who has been permitted to remove the said quantity of sand, subject to the conditions stated in the impugned order, that Rule 7 of the Rules, enables the District Collector to grant permission, to the Contractors employed for removal of sand, if it is for bona fide public purposes and not for sale or commercial profit. Both the learned counsel appearing for the respondents 1 to 3 and 4, submitted that removal of sand, is for public purpose, i.e., construction of bridge over Manimutharu river. With reference to the contention that no permission was granted by the Conservator of Rivers, for removal of sand, from the abovesaid survey numbers, Mr. A.K. Baskarapandian, learned Special Government Pleader was directed to get appropriate instructions, as to whether there was any total prohibition, for removal of sand, from the abovesaid survey numbers, or any regulatory order has been issued.

4. Reverting, Mr. A.K. Baskarapandian, learned Special Government Pleader, submitted that there is no specific order of prohibition, issued by the Conservator of Rivers, restricting removal of sand, from the abovesaid survey numbers. Based on the letter, dated 10.02.2016, of the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, addressed to the Project Director, District Rural Development Agency, Ramanathapuram, learned Special Government Pleader, submitted that removal of sand is restricted, within 500 metres upper and lower portion of the bridges, dams and water resources situated in Manimutharu river. He also submitted that the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, has stated that if any bridges, dams and water resources are situated, in the abovesaid survey numbers, within the abovesaid distance, then the above restriction for removal of sand, has to be followed and except the above, there is no restriction in the said survey numbers, for removal of sand. In the light of the statutory provisions, enabling the District Collector to grant permission, for removal of sand, for a bona fide public purpose, and the specific instruction of the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, learned Special Government Pleader, submitted that there is no manifest illegality in the impugned proceedings.

5. Both the learned Special Government Pleader, appearing for the official respondents 1 to 3, and the learned counsel for the 4th respondent/Contractor, submitted that the period, during which, permission for removal of sand, was granted, had already expired, on 05.02.2016.

6. Learned Special Government Pleader, appearing for the official respondents 1 to 3, also submitted that, if the 4th respondent seeks for fresh permission or renewal, for removal of sand, from the abovesaid survey numbers, for the specified public purpose, the District Collector, would take into consideration the letter, dated 10.02.2016, of the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, and pass appropriate orders.

7. At this juncture, Mr. S. Chellapandian, learned counsel for the 4th respondent/ Contractor, submitted that the Contractor had already submitted an application, on 05.02.2016 itself, for extension of time, for removal of sand, from the abovesaid survey numbers.

Heard the learned counsel for the parties and perused the materials available on record.

8. On the contention of the writ petitioner that the permission granted by the District Collector, Ramanathapuram, for removal of 4500 cubic metres of sand, from Survey Nos. 407, 434, 435, 460 and 461, Manimutharu, Govindhamangalam Panchayat, R.S. Mangalam Panchayat Union, Ramanathapuram District, would amount to contravention of Section 38-A of the Rules, and the judgment of the Hon'ble Supreme Court in P. Krishnamurthy's case (supra), and having regard to the power of the District Collector, under rule 7 of the Rules, granting permission for removal of sand, for public purpose, and not for sale or commercial profit, this Court, deems it fit to have a cursory look, at the provisions of the Rules. Rule 38-A of the Rules, has been inserted by G.O. Ms. No. 95, Industries, dated 01.10.2003. Rule 38-A of the rules, reads as hereunder:-

"[38-A. Quarrying of sand by the State Government - Notwithstanding anything contained in these rules, or any order made or action taken thereunder or any judgement or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/ leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded.]"

9. Bare reading of the rule 38-A of the Rules, makes it clear that all existing leases for quarrying sand in Government lands and permissions / leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of rule 38-A and the right to exploit sand in the State, shall vest with the State Government to the exclusion of others. Rule 38-A of the Rules also makes a specific reference to the existing leases / permissions granted in ryotwari lands, which shall cease to have effect from 01.10.2003.

10. Rule 7 of the Rules, reads as hereunder:-

"7. Quarrying for public purposes:--- Quarrying from unreserved waste lands including poramboke other than bunds of drinking water ponds or tanks may be allowed free of charge in the case of Department of Government of India and the State Government, Panchayat Union Councils, Panchayats and Municipalities or contractors in their employ, provided firstly, that the products removed are required and used solely for bonafide public purposes and not for sale or commercial profits and secondly that the quarrying shall be subject to the previous permission of the Revenue Divisional Officer being obtained and to the

general conditions already prescribed by the Collector, Contractors in the employ of Panchayat Union Councils. Panchayats and Municipalities shall be given a concession only if the Engineers and Assistant Engineers, or the Commissioners concerned certify that the metal is required for a bonafide public purpose and not for sale or commercial profit. In emergent cases, a certificate issued by a supervisor of the Highways Department or a supervisor of Panchayats may be accepted provisionally, but in such cases, a further certificate shall be produced from the Assistant Engineer or the Executive authority of the Panchayat confirming the supervisor's certificate as soon as possible afterwards. In the case of panchayats, free permits to contractors shall be granted on the strength of the certificates issued by the executive authorities of Panchayats counter-signed by the District Panchayat Officers. If the Revenue Divisional Officer, consider that in any case, special conditions should be imposed, he shall report the case to the Collector for orders. With the same restriction, the privilege of free removal may be allowed to other public bodies subject to the further proviso that the operations shall be conducted under the supervision of their establishment and not by contractors in their employ. The officer concerned while granting certificate shall also certify that the metal is required for a public purpose and shall state that purpose and the quantity of metal required. In all other cases seigniorage fee at the rates specified in Appendix II to these rules shall be charged. These provisions shall also apply to the removal of sand from river-beds. The Collector is empowered to close any quarry or reserve it for any particular department of Government or local bodies or prohibit or regulate quarrying in any way and may require as a condition of quarrying that the land shall afterwards be restored to a state fit for cultivation. Where a local body desires that the exclusive right of quarrying in any such land should be reserved for it, the land shall be leased to the local body concerned subject to the payment of ordinary assessment. Such leases which shall be in the form set out in Appendix III to these rules, may be granted by the Collector unless they infringe the general condition laid down in Government of India (Finance and Commerce Department) Resolution No. 933, Extraordinary, dated 20th February 1984. The relevant limitations laid down in the said resolutions are as follows:-

- (1) If the lease is granted for more than five years, it shall be accompanied by an unconditional power of revocation by the government at any time during such period on the expiry of six months notice to that effect and it shall not impose on the public revenue an annual liability in excess of Rs. 5,000.
- (2) The case shall not impose on such revenues, a charge or expenditure or liability to damages in excess of one lakh of rupees.
- (3) The case shall not involve the session of proprietary rights, the estimated value of which exceeds one lakh of rupees."''

11. Reading of the said rule makes it clear that quarrying from unreserved waste lands, including poramboke, other than bunds of drinking water ponds or tanks may be allowed free of charge, in the case of both State and Central

Governments, Local bodies or Contractors employed, and that the products permitted to be removed are required and used solely for bona fide public purposes and not for sale or commercial profits. Rule 7 of the Tamil Nadu Minor Mineral Concession Rules, 1959, also contemplates that quarrying shall be subject to the previous permission of the Revenue Divisional Officer, being obtained, and to the general conditions, already prescribed by the Collector. Contractors employed in the Panchayats and Municipalities, shall be given concession, only, if the Engineers and Assistant Engineers or the Commissioners concerned, certify that the metal is required for a bona fide public purpose and not for sale or commercial profit. There are other conditions as well. The conditions, stated supra, for removal of metal, shall also apply to the removal of sand from the river beds. Yet another important provision, to be taken note of is, Rule 15 of the Rules, which speaks about quarrying or removal of sand in certain river beds. The said Rule is extracted hereunder:-

"15. Quarrying or removal of sand in certain river beds :---Quarrying or removal of sand in the State may, however, be prohibited absolutely or regulated by the Conservator of Rivers in the case of lands in river beds to which the Madras Rivers Conservancy Act, 1884 (Madras Act VI of 1884) has been extended and no quarrying or removal shall be sanctioned by the Collector in such cases without consulting the Conservator of Rivers. Quarrying or removal of sands from beds of rivers in charge of the Public Works Department to which that Act does not apply shall not be sanctioned by the Collector without consulting the Executive Engineer of the Division. [The District Collector or the District Forest Officer, as the case may be, before granting quarrying leases or forwarding applications for quarrying leases or quarrying permits to the State Government or to the Director of Geology and Mining, as the case may be, shall ensure that clearance has been obtained for quarrying in the area from the authority in whose jurisdiction and administrative control the place of quarrying in the river is situated and from the authority in whose control any of the bridges or [water supply sources or works are vested and shall also ensure that no objection certificate has been obtained from the Tamil Nadu Water Supply and Drainage Board in respect of an area for quarrying of sand in river beds]]."

12. Reading of Rule 15 of the Rules, makes it clear that quarrying or removal of sand in the State may, however, be prohibited absolutely or regulated by the Conservator of Rivers in the case of lands and river beds to which, the Tamil Nadu Rivers Conservancy Act, 1884, (Tamil Nadu Act VI of 1884) has been extended and no quarrying or removal shall be sanctioned by the Collector in such cases without consulting the Conservator of Rivers.

13. Section 6 of the Tamil Nadu Rivers Conservancy Act, 1884, empowers the State Government, to appoint many officers as may be deemed necessary to be the Conservator of Rivers and may indicate from time to time define, by order to be notified in the Gazettes of the districts, in which, any part of such river is situated, the limits of their several jurisdictions.

14. At this juncture, learned counsel for the 4th respondent submitted that the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, has been designated as the Conservancy Officer, within whose jurisdiction, Manimutharu river, is located.

15. As stated supra, the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, in his letter, dated 10.02.2016, addressed to the Project Director, District Rural Development Agency, Ramanathapuram, has stated that prohibition for removal of sand, is applicable, only within 500 metres of the upward or downward portion of the bridges, dams and other water resources, if any, situated in the abovesaid survey numbers and as such, the restrictions do not apply for removal of sand from the abovesaid survey numbers. Rule 38-A of the Rules, speaks of the lease. Whereas, Rule 7 of the Rules, deals with permission or concession for removal of sand/metal, on satisfying specific conditions and exclusively, for bona fide public purpose and not for sale or commercial profit.

16. Reading of the impugned permission dated 20.01.2016, granted by the District Collector, Ramanathapuram, to the 4th respondent, for removal of sand measuring 4500 cubic metres, shows that the said quantity is required for construction of a bridge, over Manimutharu river, under PMGSY-VIII Scheme, valued at 2.15 crores. Public purpose is evident. The Assistant Executive Engineer(Roads and Bridges), District Rural Development Agency, Ramanathapuram, in his letter dated 16.11.2015, cited as reference No. 2 in the impugned order, dated 20.01.2016, has certified that sand in the abovesaid survey numbers, is suitable for construction, and he has also quantified the same, as 4500 cubic metres. Thus, having satisfied that the removal of sand is only for public purpose and not for sale or any commercial profit, the District Collector, Ramanathapuram, by impugned order, dated 20.01.2016, has permitted the 4th respondent, for removal of 4500 cubic metres of sand, from the abovesaid survey numbers, between 25.01.2016 and 05.02.2016, with the exclusion of Sunday, for 10 days, between 08.00 A.M. and 06.00 P.M., subject to the following conditions:-

"1) Quarrying of sand shall be done only during the permitted hours.

2) Sand shall not be quarried and removed before/after the permitted days, for any reason.

3) Quarried sand shall not be transported to other place except the place which is earmarked for construction of bridge."

17. The District Collector, Ramanathapuram, has also ordered that the 4th respondent/Contractor, has to submit a day-to-day report, as to the quantity of the sand quarried, to the Executive Engineer, District Rural Development Agency, Ramanathapuram, through the Assistant Engineer. The District Collector, Ramathapuram, has also taken note of the estimated value, and the value of one cubic metre of sand, as per the contract and accordingly, fixed the value of 4500 cubic metres of sand at Rs. 2004705/-. The District Collector, Ramanathapuram,

has also granted permission, to the 4th respondent/Contractor, to use only 12 vehicles, details of which, are set out in the impugned proceedings.

18. Thus, in exercise of the powers, conferred on the District Collectors, under rule 7 of the Rules, the District Collector, Ramanathapuram, has granted impugned permission. Now, that the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi, in his letter, dated 10.02.2016, has also made it clear that the general restrictions issued, in terms of rule 15 of the Rules, may not be applicable to the case on hand. Now, it is for the District Collector, Ramathapuram, to consider the application of the 4th respondent/Contractor, dated 05.02.2016, seeking extension of time for removal of sand, and take a decision, in terms of the statutory provisions and the letter dated 10.02.2016, given by the Executive Engineer, PWD/WRO, East Vaigai Basin Circle, Paramakudi.

19. On the apprehension of the writ petitioner that under the guise of permission, if any, granted, the 4th respondent/Contractor, would remove sand, more than the permitted quantity, in addition to the existing condition, in the order, dated 20.01.2016, it is already seen that the Contractor has to submit a day-to-day report, as to the quantity of the sand quarried, to the Executive Engineer, District Rural Development Agency, Ramanathapuram, through the Assistant Engineer. In the event of the District Collector, Ramanathapuram, granting fresh permission for removal of the prescribed quantity of sand, we direct the District Collector, Ramanathapuram, to nominate two officers, from the Mines and Minerals Department, to be present at the abovesaid survey numbers, when the actual removal of sand, is done, between the permitted hours. The officers so nominated, shall also submit the details of the sand removed to the Executive Engineer, District Rural Development Agency, Ramanathapuram, in addition to the Assistant Engineer and the Assistant Executive Engineer (Roads and Bridges, Ramanathapuram. Transport permit be granted, only by the competent authorities under the Tamil Nadu Minor Mineral Concession Rules, 1959. The official respondents 1 to 3, are directed to ensure the permitted quantity of sand, namely, 4500 cubic metres, alone is quarried and that they are also directed to ensure the same, by making necessary arrangements. Removal of sand should be done, by taking note of all the instructions issued by the department.

20. In the light of the above discussion with reference to the statutory provisions, the contention of the writ petitioner, that there is a violation of the statutory provisions and the judgment of the Supreme Court in *State of Tamil Nadu v. P. Krishnamurthy*, reported in , (2006) 4 SCC 517, cannot be countenanced. The authorities, under rule 7 of the Rules, are empowered, to grant concession/permission and it cannot be construed as a lease, which is contemplated in Section 38-A of the Rules. There is no manifest illegality in the impugned proceedings.

21. In the result, the writ petition is dismissed with the abovesaid directions. No costs. Consequently, W.M.P(MD) Nos. 2004 and 2005 of 2016 are closed.