

(2024) 04 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1027 Of 2015, IA No. 01 Of 2015

M/S G.R.G. Infra Cone Pvt. Ltd. And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 20-04-2024

Acts Referred:

Jammu And Kashmir Minor Mineral Exploitation And Processing Rules, 2017 — Rule 3, 3(3)(ii), 10

Mines And Minerals (Development And Regulation) Act, 1957 — Section 15, 23C

Citation : (2024) 04 J&K CK 0017

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Nisar Ahmad Bhat, Jehangir Dar

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. Petitioners, by way of present petition, seek a direction to the respondents to allow them to operate their units strictly in accordance with the registration certificates as well as other orders. They also seek a direction to the respondents not to cause any interference with the smooth operation of their units.

2. The contention of the petitioners is that they had applied for the installation of stone crushers at Duroo Shrai Nallah, Tehsil Tangmarg, District Baramulla, and were granted permission to operate the same. After the requisite permission, they have taken land on rent, executed lease deed and invested huge amount in the installation of their units, mobilised man and machinery. They have also taken financial assistance from other institutions, and set up their units, which are in operation for more than nine years.

3. The units of the petitioners were registered with the Industries Department where after the State Pollution Control Board issued consent orders and NOCs were also issued in their favour by the other departments for installation of units

at Shrai Nallah Tangmarg. The operations in unit were being done smoothly in accordance with the terms and conditions of the orders allowing them to operate their units, when the respondents without any cause started creating hurdles in the operation of their units. The petitioners submit that their units are duly registered and have acquired clearance of all the departments including State Pollution Control Board. The requisite devices to control water, noise and air pollution have also been installed. In view of these facts, the respondents after inspection of their units have renewed the consent to operate order in their favour.

4. The respondents, instead of allowing the petitioners to operate their units as per the orders of the competent authority are creating hurdles in their smooth functioning, as such, the petitioners were left with no other recourse but to approach this Court by way of present petition seeking a direction to the respondents to allow them to operate their units smoothly.

5. The respondent Nos. 1 and 5 in their objections submit that the petitioners have established their units of Stone Crushers at Duroo Shrai Nallah, Tehsil Tangmarg, District Baramulla in violation to the rules and regulations laid down under the J&K Water Resources (Regulation & Management) Act, 2010. It is also submitted that this writ petition is not maintainable in view of the directions passed by this Court in PIL No. 02/2014 titled 'Molvi Peer Noor Ul Haque vs. Chief Engineer and others'.

6. The respondent-Irrigation and Flood Control Department has not issued any NOC, which was pre-requisite for establishment of the unit. In the absence of the same, the petitioners cannot continue the operation of Stone Crushers in the aforesaid area. It is also submitted that the revenue authorities were approached by the petitioners for demarcation of land and the revenue authorities held the land was taken by Masjid Shareef unauthorisedly and had no authority to lease the Government land.

7. The respondents submit that these units are extracting material from nallah banks/bed which is endangering banks as well as inhabitants of the area. They are a severe threat to the Nallah Course and the Water Body and also the obstruction is caused by these units in the flow of water which can increase the threat to the embankments of the Nallah considerably thereby threatening the life and property of the inhabitants residing nearby the same.

8. The respondent No. 9-General Manager, District Industries Centre, Baramullah, in his objections, has submitted that number of Stone Crushers in the State are operating illegally, without proper authorization and clearances from various departments and it was also observed in certain cases that the Stone Crushers are located within the Nallah beds or on Kahcharai/State land and in order to regulate this trade till the pendency of the State Level Policy, the Government of Jammu and Kashmir issued certain guidelines through Industries and Commerce Department in order to regulate registration of the Stone Crusher

units by providing that no registration of the unit shall be done by the DIC concerned without following clearances:

"a) NOC from the Deputy Commissioner regarding ownership of land, distance from schools, hospital and habitation etc.

b) NOC from the State Pollution Control Board (SPCB) regarding pollution control.

c) NOC from the Geology and Mining Department regarding location, feasibility and availability of raw material, i.e., sand, bajri stones and boulders etc.

d) NOC from the Forest Department.

e) NOC from the Irrigation and Flood Control Department.

f) NOC from the Fisheries Department."

9. In view of the aforesaid conditions, the NOC from the Deputy Commissioner concerned, and Irrigation and Flood Control Department with respect to ownership of land is of prime importance and since the petitioners' units are established on State land, therefore, they cannot be allowed to run their units, as such, this petition is liable to be dismissed.

10. The petitioners have placed on record their consent to renewal with regard to setting up of Stone Crushers in Duroo Shrai Nallah, Tehsil Tangmarg, District Baramulla. All these consent orders by the J&K State Pollution Control Board are valid till September, 2015. Learned counsel for the petitioners, however, submits that these orders have been extended from time to time. This Court vide order dated 11.06.2015 had directed as under: -

"Meanwhile, subject to objections and till next date of hearing before the Bench, parties to maintain status quo with reference to allowing the petitioners to operate their business in accordance with law."

11. In terms of order dated 11.06.2015, protection was granted to the petitioners regarding operation of their business in accordance with law is concerned.

12. The respondents have also placed on record S.O. 60, dated 23.02.2021. In exercise of powers conferred under Section 15 and Section 23C of the Mines and Minerals (Development and Regulation) Act, 1957, (Central Act No. 67 of 1957), have set up rules known as "Jammu and Kashmir Stone Crushers/Hot and Wet Mixing Plants Regulation Rules, 2021". In terms of this S.O, the "General Requirements" of a Stone Crusher are mentioned in Rule 3, which reads as under:

"3. General Requirements.— (1) A Stone Crusher/Hot and Wet Mixing Plant is not a mining unit but a processor of minerals obtained from a source with a valid mineral concession. Such units shall be regulated by laws, rules and other provisions applicable to industrial units.

(2) No permission/license would be needed by a Stone Crusher/Hot and Wet Mixing Plant from the Mining Department except where it also engages in mining, which activity shall be regulated by laws/rules applicable to mining.

(3) Stone Crusher/Hot and Wet Mixing Plant shall establish/operate only on securing:-

(i) Consent to establish/operate from the Jammu and Kashmir Pollution Control Board issued as per the procedure/ guidelines and sitting criteria prescribed by the Jammu and Kashmir Pollution Control Board;

(ii) No Objection Certificate from Deputy Commissioner concerned regarding title verification of land and its usage; and

(iii) Registration with the District Industries Centre (DIC) if the unit holder intends to avail any incentives available in the Industrial Policy."

13. In view of this S.O, the stone crusher who are regulating by law can operate only when NOC from the Deputy Commissioner regarding title verification of land and its usage is of paramount consideration before obtaining the consent to operate.

14. Rule 10 of the said S.O. deals with the units which were existing prior to commencement of Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017. The same is reproduced as under:

"10. Units existing prior to the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017.— Notwithstanding anything contained in these rules, an unlicensed Crusher Unit/Hot and Wet Mixing Plant existing before the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017 having valid consent to operate from the Jammu and Kashmir Pollution Control Board shall be allowed to operate. However, after expiry of consent to operate, it shall have to obtain fresh permission as per Rule 3(3)(ii) as one time requirement."

15. In case for units, which were granted the consent to operate was given to them before the promulgation of Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017, and in terms of the said rules, they had to seek a mandatory consent to operate in terms of the Rules of 2017, which have been repealed and now, they had to seek consent in terms of S.O. 60, dated 23.02.2021.

16. Rule 3 provide for the general requirements and similarly Rule 10 reads as under: -

3.General Requirements.—(1) A Stone Crusher/Hot and Wet Mixing Plant is not a mining unit but a processor of minerals obtained from a source with a valid mineral concession. Such units shall be regulated by laws, rules and other provisions applicable to industrial units. (2) No permission/license would be needed by a Stone Crusher/Hot and Wet Mixing Plant from the Mining

Department except where it also engages in mining, which activity shall be regulated by laws/rules applicable to mining. (3) Stone Crusher/Hot and Wet Mixing Plant shall establish/operate only on securing,— (i) Consent to establish/operate from the Jammu and Kashmir Pollution Control Board issued as per the procedure/ guidelines and siting criteria prescribed by the Jammu and Kashmir Pollution Control Board ; (ii) No Objection Certificate from Deputy Commissioner concerned regarding title verification of land and its usage ; and (iii) Registration with the District Industries Centre (DIC) if the unit holder intends to avail any incentives available in the Industrial Policy.

10.Units existing prior to the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017.—Notwithstanding anything contained in these rules, an unlicensed Crusher Unit/Hot and Wet Mixing Plant existing before the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017 having valid consent to operate from the Jammu and Kashmir Pollution Control Board shall be allowed to operate. However, after expiry of consent to operate, it shall have to obtain fresh permission as per Rule 3(3)(ii) as one time requirement.

17. The petitioners, instead of approaching the respondents for requisite permission to operate has approached this Court seeking a direction to the respondents to allow them to operate their units as per the registration certificate and other orders and also not to interfere in their operations, which cannot be granted to them.

18. In view of the aforesaid fact and circumstances give above, the there is no merit in this petition and the same is accordingly dismissed.