

(2013) 09 KAR CK 0238

In the Karnataka High Court

Case No : Writ Petition No. 36912 of 2013 (GM-MM-S)

M/s. PBI Contractors and Engineers (Stone Crusher)

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Karnataka Regulation of Stone Crushers Act, 2011 — Section 3(2), 3(3), 4, 6, 7

Citation : (2013) 09 KAR CK 0238

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Srinivasa K.N, for the Appellant; B. Veerappa, AGA for R1, 3 and 4, Sri. D. Nagaraj, for R2, R5 Dispensed with, for the Respondent

Final Decision : Disposed Off

Judgement

B.V. Nagarathna, J.—Sri Basavaraj Kareddy, learned Principal Govt. Advocate takes notice for Respondent Nos. 1, 3 and 4 and Sri D. Nagaraj, learned counsel takes notice for respondent No. 2. Notice to respondent No. 5 is dispensed with. In this writ petition, the petitioner has sought a direction to the respondents to consider the petitioner's representation dated 17/04/2013 (Annexure "J"), directing the respondents to grant Temporary Licence as per Section 7 of the Karnataka Regulation of Stone Crushers Act, 2011 (hereinafter, referred to as the "Act"), without insisting the petitioner to shift its unit to the safer zone and allow the petitioner to carry on the operation at the present location. He has also assailed the closure Notice dated 25/07/2013 at Annexure-M.

2. It is the case of the petitioner that he has a stone crusher unit M/s. P.B.I. Contractor & Engineers Sy. No. 446, Bailur village, Khanapur Taluk, Belgaum District. That petitioner is a registered partnership company in the registrar of firms, Karwar and it is running Stone Crusher Units, after obtaining consent order dated 28/04/2012 vide Annexure "A", from the second respondent. That the State Government has entrusted and issued another work order vide its letter dated 17/10/2012 to the petitioner for widening of Magazine Link Road and

Construction of RCC Drains in Belgaum City (Construction of Drain and Footpath to South side of Vanita Vidyalaya and Maszid Circle to Agran Talav Circle) under 5054 (Road and Bridges) 2011-12 - change of work (Work Indent 11079/Call-2) vide letter dated 17/10/2012 at Annexure "C".

3. That pursuant to the directions of this Court as well as the Hon"ble Supreme Court, in the case of Obayya Pujari, safer zones for location of stone crushing units had to be notified and the same have been notified. That the petitioner has made application for grant of licence to the stone crushing unit in the safer zone but the said licence has not yet been granted. Therefore, the grievance of the petitioner is that on the one hand the allotments in the safer zones have not been made by the respondent - authorities and on the other hand he would not be able to pursue stone crushing activity in the existing location, as a result, his business would be adversely affected.

4. Having regard to the prayers made in the writ petition, we are of the view that this writ petition can be disposed of in terms of the order passed in the earlier writ petition in W.P. No. 37278/2013.

5. In terms of sub-section (2) of Section 3 of the Karnataka Regulation of Stone Crushers Act, 2011 ("Act", for short), the applications have to be considered within a period of three months from the date of receipt of the application by the Licencing Authority. On grant of a licence by the Licencing Authority as per sub-section (3) of Section 3 of the Act, sub-section (4) of Section 3 provides that the existing stone crusher unit shall shift to the safer zones within six months.

6. In fact, Section 3 of the Act which prescribes the time frame is extracted for felicity of reference:--

3. Stone crushers to obtain license:--(1) No person shall carry on the business of stone crushing in the State except under and in accordance with the terms and conditions of a license issued under this Act.

(2) Any person who is carrying on the business of stone crusher on the date of commencement of this Act with a license issued by any authority shall apply to the Licencing Authority for a license u/s 4 of the Act within three months from the date of declaration of safer zone u/s 6.

(3) On receipt of the application made under sub-section (2), the existing stone crusher units may be allowed to function till the grant or refusal of the license under the provisions of this Act or till three months from the date of receipt of application within which time the licensing authority shall dispose of such application after due verification of the location and fulfillment of other conditions of licence.

(4) On grant of licence under sub-section (3), the existing stone crushers shall be shifted to the safer zone within six months.

7. The purpose of the said section is to ban all stone crushing units in the State,

except those which carry on the business of stone crushing as per the terms and conditions of the licence issued under the Act. Section 4 speaks about the application for licence, Section 5 says that the term of licence is for a period of three years and may be renewed for a further period of three years, subject to fulfillment of conditions laid down under the Act or the Rules made there under. The explanation states that where a licence has been granted in the middle of a year, for the purpose of computing the term of licence, the remaining part of the year shall be deemed to be a year.

8. Sub-section (2) of Section 3 states that if any person is carrying on the business of stone crusher on the date of commencement of this Act with a licence issued by any authority shall apply to the Licencing Authority for a licence u/s 4 of the Act within three months from the date of declaration of safer zone u/s 6. So, within a period of three months the application would have to be made. Section 7 of the Act reads as follows:

7. License for stone crushers for Government projects:--Notwithstanding anything contained in this Act, license for temporary stone crushers exclusively for construction of National Highway, State Highway or " any other infra-structural Government project and Government approved Public Private Partnership Projects may be granted for the project period on their fulfilling the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Environmental Protection Act, 1986 and Rules made thereunder.

In the circumstances, the respondent - authorities are directed to consider the representation made by the petitioner, which is at Annexure "J", strictly in accordance with Section 7 of the Act and to pass necessary orders on the same expeditiously and within a period of 10 days from the date of receipt of certified copy of this order. In case the petitioner's unit falls within the scope of Section 7 of the said Act, then to pass orders in terms of the said section and also having regard to the other provisions of the said Act. In case such a licence is granted to the petitioner, then he has to comply with other requirements of Section 7. Till then no permission can be granted to the petitioner to carry on his stone crushing activity in the present location. The writ petition is accordingly, disposed of.