

(2014) 11 KAR CK 0289

In the Karnataka High Court

Case No : Writ Petition No. 35236/2014 (GM-MM-S)

N.H. Chidamdar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0289

Hon'ble Judges : D.H. Waghela, C.J.; Budihal R.B., J

Bench : Division Bench

Advocate : R.G. Kolle, Advocate for the Appellant; Narendar G., AGA and B.S. Prasad, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.

1. The petitioner is stated to have secured building stone quarrying lease and licence vide Ql. No. 682 in respect of an area of 01 acre in Sy. No. 6 of Suiebylu village in Shimoga Taluka and Shimoga District, for a period of five years from 30.04.2010 which is valid up to 29.03.2015. The petitioner claims to have obtained no objection certificate for carrying out blasting operations in the quarrying lease area as provided under the provisions of the Explosives Rules, 2008. Accordingly, admittedly, the petitioner is carrying out his stone quarrying activities with the aid of explosives.

2. The grievance of the petitioner is that respondent No. 5, Deputy Commissioner and District Magistrate, Shimoga, has notified a part of the land bearing Sy. No. 6 as "Safer Zone" under the provisions of the Karnataka Regulation of Stone Crushers Act, 2011, and respondent No. 6 is allotted land for their stone crusher unit within 200 meters of the quarrying lease area occupied by the petitioner. It is the contention of petitioner that since petitioner has been permitted to carry out quarrying activity with the help of explosives, permitting respondent No. 6 to put up a stone crusher unit within the buffer zone of 200 meters is impermissible under the Karnataka Minor Mineral Concession Rules, 1994 (KMMC Rules" for

short) as also the Explosives Rules, 2008 It was submitted that if the stone crusher unit is allowed to be set up and operated by respondent No. 6, petitioner will not be able to carry out his lawful activities. The petitioner has sought to indirectly challenge notification dated 07.02.2013 of the Deputy Commissioner, Shimoga, whereby lands adjoining the area leased out to petitioner are declared as "Safer Zone" for stone crusher units.

3. Learned counsel appearing for respondent No. 6 submitted that the petition is not maintainable in so far as the aforesaid notification dated 07.02.2013 is not called into question and it is under that notification that respondent No. 6 has been granted land for establishment of his stone crusher unit.

4. Learned Additional Government Advocate submitted that petitioner is required to abide by law and can use explosives only subject to conditions contained in their licence issued there for and also without violating the provisions of KMMC Rules. The use of explosives in the leased area is regulated by the provisions of Rule 6 of KMMC Rules, 1994, as also conditions of quarrying lease/licence which are prescribed in Form-E of KMMC Rules. Sub-Rules (2) and (3) of Rule 6 of KMMC Rules, read as under;

"6. General conditions of quarrying lease and licence.-

(1)...

(2) No person shall carry on or allow to carry on any quarrying operations within a distance of fifty metres if no blasting is involved and two hundred metres if blasting is involved from the boundary of any railway line, reservoir, tankbund, canal or other public works and public structures or any public road, or building. The holder of a quarrying lease or licence shall also abide by such conditions as the Competent Authority may impose to carry on quarrying operations in the vicinity of the aforesaid buildings or places.

(3) In case of breach by the lessee or licensee or his transferee or assignees of any of the conditions specified in these rules or in the quarrying lease deed or licence, the Competent Authority shall require by notice in writing the lessee or licensee to remedy the breach within thirty days from the date of notice and if the breach is not remedied within such period the Competent Authority may levy a fine not exceeding two thousand rupees in the case of non-specified minor minerals and rupees ten thousand in case of specified minor minerals and the Competent Authority may without prejudice to any other action that may be taken against such lessee, licensee, transferee or assignee determine the lease or licence after providing an opportunity of being heard."

5. The prescribed Form-E for quarrying lease/licence in the KMMC Rules prescribes the following relevant restrictions and conditions in Part-III of the Form.

PART III Restrictions and conditions as to the exercise of the liberties, powers and privileges in Part II

1. to 4.....

5. No mining operations within 50 metres of public works, etc.

The lessee/licensee shall not work or carry on or allow to be worked or carried on any quarrying operations at or to any point within a distance of 50 metres if no blasting is involved from the boundary of any railway line except with the previous written permission of the Railway Administration concerned or from the boundaries or reservoir, canal, high tension electric line, or other public works, or buildings, or inhabited site, except with the previous permission of Government or any other officer authorized by the Government in this behalf and otherwise than in accordance with such instructions, restrictions and conditions and either general or special which may be attached to such permission. The said distances of 50 metres or 200 metres shall be measured in the case of railway, reservoir or canal horizontally from the outer toe of the bank of the outer edge of the cutting as the case may be and of building horizontally from the plinth thereof."

The above provisions impose restrictions and requirement of permission on the lessee/licensee and do not create any right in his favour to claim that no construction or industrial activity should have been allowed within 200 metres of the leased area as contended by learned counsel Mr. R.G. Kolle appearing for the petitioner. In that view of the matter, the petition appears to be wholly misconceived and it lends credence to the allegation made by learned Additional Government Advocate that the petition is filed with an ulterior motive. He has submitted, with support of documentary evidence in the form of petitioner's application for grant of stone crusher licence, in the same safer zone, that his application was rejected on the ground of non-production of necessary documents. Therefore, there are reasons to believe that present petition is filed to threaten and harass respondent No. 6, there being no ground available to the petitioner to either challenge declaration of the area as safer zone or rejection of his own application for grant of land in the safer zone. In that context, it is specifically averred by Senior Geologist, respondent No. 4, that when the petitioner failed in his attempt to secure licence and site for establishment of his own stone crusher unit, it is not open to question the allotment made to respondent No. 6 on the ground that it would be in violation of Rule 6(2) of KMMC Rules. The material fact of having made an application for licence and site for establishment of stone crusher unit and rejection of his application is suppressed by the petitioner.

6. As stated in the statement of Senior Geologist, the business of stone crushers and quarrying operations are related to each other. In fact, there are 18 quarrying leases operating near the safer zone and stone crusher units are allotted sites in the safer zone which is adjacent to the existing quarries or within a short distance thereof. If a distance of 200 metres had to be maintained, there could not be any stone crusher in the safer zone and the stones quarried by the leaseholders would be unnecessarily required to be transported at a distance which would not be convenient or conducive for clean environment. The District

Stone Crusher Committee headed by Deputy Commissioner appears to have taken all these aspects into consideration and declared the safer zone, and therefore, even as the petitioner is granted permission to use explosives, he has to undertake blasting operations only after taking precautionary measures. In fact, notice dated 22.07.2014 is already issued to the petitioner by respondent No. 4 to follow procedure prescribed in the Explosives Rules, 2008 and the Explosives Act, 1884.

7. In view of the facts and contentions, petitioner is required to abide by conditions of lease and licence, conditions imposed for issuing licence under the Explosives Rules, 2008, as also conditions contained in schedule to the quarrying lease, particularly in respect of use of explosives. In case of any violation or failure on the part of the petitioner, respondents concerned are required to take energetic action in the interest of rule of law, safety of the neighbouring industrial units and for protection of the environment.

8. With these observations, petition is dismissed with cost quantified at Rs. 10,000/- out of which, Rs. 5,000/- shall be paid to respondent No. 6 and remaining Rs. 5,000/- shall be paid to respondent No. 4 by the petitioner, within a period of one month from today.