
(1997) 08 MAD CK 0137
In the Madras High Court
Case No : Writ Petition No. 10823 of 1997

R.K. Ramasamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11A, 11D, 15, 15(1), 25
Mines and Minerals (Regulation and Development) Act, 1948 — Section 5
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 10(1), 2(7), 36, 36(1), 36A

Citation : AIR 1998 Mad 106

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; K. Venkatapathy, General, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—By consent of all the parties the main writ petition itself is taken up for final disposal. Aggrieved against the order of show-cause notice dated 15-7-97 passed by the second respondent, the petitioner has filed the above writ petition to quash the said notice.

2. The case of the petitioner is briefly stated hereunder:

According to him, by G.O. 2(D) 71 Industries (M.C.-2) Department dated 22-3-96 the first respondent has granted sand quarry lease in respect of 25-00-0 Hectares in Survey S.F. No. 1 of Mayanur village, Kulithalai Taluk. The said lease is for a period of 5 years and necessary lease agreement has been executed and duly registered. The lease amount fixed for the first year is Rs. 1,00,000/- and the same has been paid on 3-4-96. It is also contended that regarding issuance of transport permit, using machinery and also for further direction, the petitioner has approached this Court on earlier occasion. It is further contended that he has also initiated contempt proceedings against the respondents particularly against

the second respondent. Because of which the second respondent has sent a notice dated 15-7-97 alleging that the petitioner had quarried more than the permitted depth in the said quarry and directing him to show cause why an amount of Rs. 2,34,00,000/- should not be levied and collected. According to him, the impugned notice issued by the second respondent is due to mala fide intention. It is also contended that none of the respondents have any power to quantify the alleged excess quarry than the permitted depth. There is no procedure in the Rules. In those circumstance, the action of the respondents is without jurisdiction. Since the respondents have no jurisdiction and the impugned notice has been sent by the second respondent with mala fide intention, according to the petitioner, there is no need to submit any explanation. Hence he has approached this Court by way of the present writ petition.

3. By Order dated 23-7-97 this Court has ordered notice of motion to the respondents. In pursuance of the notice, respondents entered appearance through their counsel.

4. In the light of the above pleadings, I have heard Mr. K. Ramakrishna Reddy, learned Counsel for the petitioner and learned Advocate General for respondents.

5. Mr. K. Ramakrishna Reddy has raised the following submissions:

(i) The respondents have no power or jurisdiction to pass the impugned notice. In other words, according to him, there is no provision either in the Mines and Minerals (Regulation and Development) Act, 1957 or in the Tamil Nadu Minor Mineral Concession Rules, 1959 to proceed against the petitioner on the basis of the impugned notice.

(ii) There is no mechanism to ascertain the alleged excess quarry and the consequential amount in the Rules.

(iii) In any event, inasmuch as the second respondent has pre-concluded everything in the impugned notice, it is not a valid show-cause notice, hence the same cannot be sustained. In support of the above 3 contentions, he has relied on the following decisions:

(1) Chandeswar Prosad Singh and Another Vs. Sub Divisional Land Reforms Officer, Barrackpore and Others, .

(2) Kalyanam Tile Co., Manaly Vs. State of Kerala and Others, .

(3) 1993 WLR 63.

(4) Ramlal and Sons Vs. The State of Rajasthan, .

(5) : State of Bihar and others Vs. Subhash Singh,

(6) M. Govindaraju Vs. K. Munisami Gounder (D) and others, .

(7) Eternit Everest Ltd. Vs. Union of India, .

(8) 1991 WLR 59.

6. On the other hand, learned Advocate General after taking me through Section 15(g) and (o) of the Mines and Minerals (Regulation and Development) Act as well as Rule 36-A(3) and (5) of the Rules submitted that the respondents are competent to verify and quantify if there is any excess quarrying or violation of the lease conditions. He further submitted that in view of the above specific conditions, the impugned order of the second respondent is well founded. He also submitted that inasmuch as the impugned notice is only a show-cause notice without submitting explanation and contesting the case, it is not open to the petitioner to approach this Court at this stage. He finally submitted that the decisions referred to by the learned Counsel for the petitioner are not applicable to the facts of the present case.

7. I have carefully considered the rival submissions.

8. There is no dispute that the first respondent by order dated, 22-3-96 granted sand quarry lease in respect of 25-00-0 Hectares in Survey S.F. No. 1 of Mayanur village, Kulithalai Taluk. It is seen from the impugned notice issued by the second respondent dated 15-7-1997 that the petitioner by violating the conditions of lease as well as various orders of this Court as quarried excess sand. It is also further seen that on the basis of the Transport Permit issued by the respondent, the second respondent after holding that the petitioner has quarried more than the prescribed limit, on the basis of Rule 36-A(3) and (5) of the Tamil Nadu Minor-Mineral Concession Rules, 1959, imposed penalty of Rs. 2,34,00,000-00 and directed the petitioner to submit his explanation, if any within ten days. The said order is being challenged in the present writ petition as stated above. Mr. Ramakrishna Reddy, after taking me through the provisions of Sections 4 and 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") as well as the entire Tamil Nadu Minor, Mineral Concession Rules, 1959 (hereinafter referred to as "the Rules") submitted that there is no specific provision which enables either the State Government or the District Collector or any other authority to impose penalty on the alleged ground of excess quarrying. By relying on the very same provisions, he contended that there is no mechanism under the Rules in order to ascertain the alleged excess sand quarried and consequential penalty, amount as done in this case by the second respondent.

9. Repelling the above contentions, learned Advocate General has brought to my notice Section 15 of the Act. Section 15 of the Act enables the State Government to make Rules in respect of minor and minerals. Learned Advocate General has very much relied on Section 15(g) as well as (o) of the Act. Section 15(g) runs as follows:

15. Powers of State Government to make Rules in respect of minor minerals: (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions

in respect of minor minerals and for purposes connected therewith.

(1-A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) x x x

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(o) any other matter which is to be, or may be, prescribed.

By pointing out Sub-clause (g) of Section 15(1) of the Act more particularly the words used "fines" Or "other charges", the learned Advocate General submitted that the above clause enable the State Government to frame rules. Even otherwise, according to him, on the basis of residuary clause, namely, (o), the State Government is competent or empowered to frame Rules. Thereafter the learned Advocate General has brought to my notice Rule 36-A(3) and (5) of the Rules. In order to appreciate his contention, the said rule is extracted hereunder:

36-A. Penalties- (1)....

(2) ...

(3) Whenever any person raises without any lawful authority any mineral from any land, the District Collector or the District Forest Officer, as the case may be, may recover from such person the mineral so raised or where such mineral has already been disposed of, the price there of, and may also recover from such person, area assessment seigniorage fee or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(4) ...

(5) Whoever contravenes any provisions, other than Sub-rule (1) of Rule 10 of these rules or conditions of a quarrying permit or quarrying lease granted under these rules, the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be or the District Collector or the District Forest Officer, as the case may be, shall after giving notice, charge and recover from that person enhanced seigniorage fee up to a maximum of fifteen times the normal rate, or in the alternative, shall be punished with imprisonment for a term which may extend to one year or with fine which may extent to five thousand rupees or with both and in the case of continuing contravention with additional fine which may extent to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

By pointing out the above Sub-rules (3) and (5) of Rule 36-A of the Rules, the learned Advocate General contended that in view of the fact that the District Collector came to know that the petitioner quarried sand in excess than what is

allowed or permitted. As per the Rules or lease, it is always open to him to take appropriate action including the action of imposition of penalty. In the light of the provisions in the Act as well as in the Rules referred above, the action of the second respondent, according to the learned Advocate General, is well founded. He further submitted that if the petitioner has any grievance with regard to the alleged violation of excess quarrying, it is open to him to explain before the 2nd respondent as directed by him. The intention of the Mines and Minerals (Regulation and Development) Act, 1957 as seen from the preamble of the Act is to provide for the regulation of mines and development of minerals under the control of the Union. Section 4 of the Act deals with general restrictions on undertaking, prospecting or mining operations. As per the said section, no person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder. Section 15 gives power to the State Government to make rules in respect of minor minerals. As per Section 15(g) it is open to the Government to frame Rules with regard to fixing and collection of rent, royalty, fees, dead rent, fines or other charges. The very same clause enables the time within which and the manner in which the above mentioned things shall be payable. In exercise of the powers conferred by Section 15 of the Act the Government of Tamil Nadu framed Minor Mineral Concession Rules, 1959. Rule 2(7) of the Rules defines "quarrying permit" which means a permit granted under these rules to extract a specified quantity of a minor mineral within the period stipulated in the permit. Since there is no dispute with regard to power to grant lease, I am not traversing the other rules. Now the main objection is in the absence of any machinery to quantify the alleged excess quarrying of sand the notice of the second respondent cannot be sustained and second respondent is also equally incompetent to issue such notice. Rule 36 of the Rules deals with general restrictions in respect of quarrying operations. It contains how the lease-holder or permit-holder or their men shall work or carry on or allow to work. Rule 36(1) to (5)(a) to (h) exhaustively deals with how the lessee or permit-holder has to carry on, how to transport and if any violation action to be taken by the authorities. After enumerating exhaustively the steps to be taken or followed by the lessee or permit-holder. Rule 36-A inserted by G.O.Ms. No. 166, Industries Department dated 16th June, 1994 with effect from 22nd June, 1994 clearly mentions the penalties for the contravention of the provisions of Sub-section (1) of Section 4 of the Act. I have already extracted Sub-rules (3) and (5) of Rule 36-A of the Rules. After reading of the said sub-rule, viz., Sub-rules (3) and (5), I am unable to accept the vehement argument of the learned Counsel for the petitioner that no machinery has been provided in the Rules. Since the language used in both the sub-rules is very simple, there is no need to repeat the same. I am satisfied that in the light of Section 4(1), Section 15 read with Rules 36 and 36-A(3) and (5) of the Rules the action of the second respondent is within the powers conferred on him. In such circumstance, I am unable to accept the contra argument made by the learned Counsel for the petitioner. Even though I am

satisfied with the above referred provisions with regard to power and jurisdiction and if any one violates any provision stated above or lease conditions, the authorities in this case viz., the second respondent is competent to initiate proceedings. Inasmuch as the learned Counsel for the petitioner has referred to many "decisions, I shall consider the same one by one.

10. The learned Counsel for the petitioner has relied on a decision reported in Chandeswar Prosad Singh and Another Vs. Sub Divisional Land Reforms Officer, Barrackpore and Others, and the relevant observation pointed out by him is extracted hereunder:

The price of the minerals unlawfully raised and disposed of, however, has to be ascertained. No rule appears to have been promulgated under the Central Act laying down the procedure for ascertainment of such price. Similarly the rules framed by the State Government under the said Act also do not provide any procedure or machinery for such ascertainment. In any event, the rule making power conferred on the State Government u/s 15 of the said Act is extremely limited and is confined to regulation of grant of lease and concessions and for the purposes connected therewith. It may not be open to the State Government to promulgate rules for ascertainment of and recovery of price of minor mineral illegally extracted and disposed of and the remedy may be by way of a regular suit for conversion or recovery of price.

After the price has been lawfully ascertained, only then the same can be held to have become a sum due to the Government and it is thereafter that the State Government can proceed to recover the same as arrears of land revenue u/s 25 of the Act.

No doubt, in the said decision, the learned Judge of the Calcutta High Court has observed that it is (not) open to the State Government to frame rules for ascertainment and recovery of minor minerals illegally extracted and disposed of and the remedy may be by way of regular suit for conversion or for recovery of price. With great respect to the learned Judge in view of the specific rules in our case, I am unable to follow the observation mentioned above.

11. The following passage is relied on in a decision reported in Kalyanam Tile Co., Manaly Vs. State of Kerala and Others, :

Under such a situation the imposition of royalty on the petitioner is clearly erroneous. It therefore follows that Ex. P-1 order is without jurisdiction and has to be set aside.

After going through the entire judgment and in the light of the Kerala Minor Mineral Concession Rules, I am of the view that the said decision is not applicable to the present case.

12. Mr. K. Ramakrishna Reddy, learned Counsel for the petitioner while relying on the following passage in a decision reported in Kaveri Chetty, M.P.P. v. State of Tamil Nadu 1993 WLR 63 viz.,

...Further, there is nothing in Section 15 of the Act which empowers the State Government to frame a Rule enabling the State. Government or the State owned Company or Corporation to fix the minimum price for granite.

contended that in view of the legal position, the action of the respondent cannot be sustained. After considering the entire judgment of the Division Bench, I am unable to accept the argument of the learned Counsel for the petitioner, since first of all the above observation relates to fixation of price for granite. I have already extracted the relevant section and the corresponding rules. In such a circumstance, I am also of the view that the said decision has no bearing for the case in hand.

13. The other decision cited by the learned Counsel for the petitioner is Ramlal and Sons Vs. The State of Rajasthan, . The relevant passage in the said decision is extracted here under:

When in this case grant of the mining lease was envisaged under definite statutory rules made in exercise of power conferred u/s 5 of the Mines and Minerals (Regulation and Development) Act, 1948, the State Government was under legal obligation to act in accordance with these rules. It could not exercise a power in the matter of grant of mining lease unknown to these Rules. The State Government could not impose terms and conditions according to its own whims ignoring of disregarding the statutory rules which are binding on it.

In the said decision, as per Rule 41(3) of the Rajasthan Mineral Concession Rules, 1949, prior approval of the Central Government has to be obtained. Since no such approval was obtained. Their Lordships in the said judgment after holding that the action of the State Government is illegal, directed refund of the amount collected earlier. Such is not the position in our case as demonstrated earlier, hence the present judgment is also not applicable to our case.

14. The other decision very much relied on by the learned Counsel for the petitioner is Eternit Everest Ltd. v. Union of India (1997) 89 ELT 28 (Mad). The learned Counsel for the petitioner relying on the following conclusion, viz.,

In view of the above, we are of the view that the impugned proceedings issued in the nature of demand-cum-show-cause notices are totally without jurisdiction and, therefore, liable to be and are hereby quashed,

contended that the impugned show cause notice in our case is also liable to be quashed. I am unable to accept the above contention for the simple reason that the Hon"ble Judges in the said decision in para 24 have made it clear thus:

...We are faced to deal with a case of total absence of any provision or Jack of any machinery provision for assessment or adjudication of any claim of the nature visualised u/s 11D of the Act which is a distinct claim not like the other claims u/s 11A to 11C of the provisions of the Act, which is, striking contrast to Section 11D deal with only a claim relating duty exigible under the Act.

In view of the specific reasoning given, by Their Lordships, in the said decision, I am of the view that the ultimate conclusion reached in the decision is not applicable to our case.

15. The other decision relied on by the learned Counsel for the petitioner is State of Bihar and others Vs. Subhash Singh, . In the said decision Their Lordships of the Supreme Court have held thus (para 3 of AIR):

...The judicial control on administrative action, thus, affords the Courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review.

It is true that if there is any flaw in the administrative action, it is always open to this Court to interfere with and set right the same. However, in the present case I do not find any procedural error except only one thing which the second respondent did is the release of show cause notice to the press and T.V., as if he has already determined and imposed penalty against the petitioner. I shall deal with the same a little later.

16. Finally the learned Counsel has also attacked the impugned notice stating that the District Collector, Karur District has pre-concluded the issue by stating that the petitioner has committed violation of the Rules, licence conditions and quantified the amount on the basis of Rule 36-A(3) and (5) of the Rules. He further contended that if the statutory authority pre-concludes the issue even at the show cause notice stage, then in the eye of law it cannot be presumed as proper show cause notice for which he relied on a decision of the Division Bench of this Court reported in Madurai Metal Industries v. Union of India 1991 WLR 59. The learned Counsel has very much relied on the following conclusion of the Division Bench and the same is extracted hereunder:

The above principle obliges us to countenance the case of the petitioner. As rightly contended by the learned Counsel for the petitioner, the impugned show cause notices cannot be allowed to stand by merely directing the third respondent to proceed further impartially and with care on the basis of the impugned show cause notices. The learned single Judge, as already noted, seems to be of the view that the disciplinary enquiry will stand on a different footing. The basic principle is that a show cause must be a real show cause, keeping an open mind with regard to the subject matter of the enquiry proposed that if the show cause bears out a foreclosed or a pre-judged mind, that will violate the principles of natural justice. We could not distinguish cases arising under other circumstances from cases relating to disciplinary, action, with regard to application of this basic principle.

It is true that in the impugned order, after referring numerous earlier writ petitions, interim orders etc, the District Collector, second respondent has come to the conclusion that it is not possible for the petitioner to transport 51,900 lorry loads for the period from 16-10-96 to 11-7-97 without defeating or violating the rules or licence conditions. After holding so on the basis of the

transport permits, issued he has calculated and fixed penalty of Rs. 2,34,00,000-00. A careful analysis of the impugned notice shows that the second respondent has concluded that the petitioner has violated the rules and lease conditions and ascertained the penalty, hence it cannot be said that he has already concluded or decided against the petitioner. As a matter of fact, as rightly contended by the learned Advocate General if the petitioner has any grievance, it is open to him to submit his objection as called for by the second respondent.

So I am unable to accept the contention that the second respondent has already pre-concluded the issue. It is needless to mention that without giving the details of the alleged violation and the proposed amount of penalty, it may not be possible for the petitioner to submit his explanation. If the second respondent simply mentions that there is violation of rules and lease conditions and he is going to impose penalty then it is open to the petitioner to contend that the authority has not furnished anything to offer his explanation. In such circumstance, the petitioner has not lost anything in view of what is stated in the show cause notice.

17. I am also unable to accept the argument of the learned Counsel for the petitioner that the second respondent has passed the impugned notice due to mala fide action, only on the ground that the petitioner has filed a number of writ petitions and obtained interim orders before this Court.

18. Under these circumstances, I hold that the impugned notice passed by the 2nd respondent is well within the powers conferred on him as per the provisions of The Mines and Minerals (Regulation and Development) Act, 1957 as well as The Tamil Nadu Minor Mineral Concession Rules, 1959. As pointed above, I am satisfied that the action of the second respondent cannot be interfered with on the ground of want of jurisdiction or mechanism. I also reject the contention that the second respondent has pre-concluded the issue and the same is violative of the principles of natural justice.

19. Before parting with this case, it is my duty to point out that after sending the impugned show cause notice requesting the petitioner to offer his explanation within 10 days, the second respondent, namely, District Collector, Karur has rushed to the press and media to show that because of his initiation and steps, he has imposed the penalty of Rs. 2,34,00,000-00 against the petitioner. If such statement is found to be correct, the action of the second respondent is highly regrettable. When a statutory authority exercising the powers under the provisions of the Statute while sending the show cause notice to the aggrieved person to offer his explanation, it cannot be said that the said authority (District Collector, Karur) has finally concluded or determined the issue unless and until it is finally decided after considering the explanation or remarks of the aggrieved person. Hence, as already stated, if the averment of the petitioner in para 12 of the affidavit is found to be correct, the action of the second respondent is to be condemned. By making such statement by the statutory authority is the second

respondent-District Collector, Karur District, he has made the aggrieved person, is the petitioner herein to raise a contention that he has already pre-determined or prejudiced against him. More so, it is only a show cause notice and it is always open to the aggrieved person to convince the authority by placing acceptable evidence. Hence, it is not proper on the part of the second respondent to make a statement that he has imposed a penalty of Rs. 2,34,00,000-00 against the petitioner even without considering the case of the petitioner. I do not want to say further in this regard.

20. Considering the issue involved and the peculiar factual position, I hereby permit the petitioner to submit his explanation within 15 days from to-day (8-8-1997) before the second respondent for the show cause notice dated 15-7-97. On such filing of the explanation, I hereby direct the second respondent to inspect the quarry site after giving proper notice to the petitioner and after taking the assistance of the Assistant Director of Geology and Mining, Karur, as well as concerned Engineer, Rural Development, River Division, Karur Circle to ascertain the actual violation if any, in the presence of the petitioner. I also direct the second respondent to consider the statement or representation of the petitioner with the assistance of the above said persons before taking any decision. Depending on the explanation to be offered by the petitioner as well as inspection, ascertainment and determination of violation of any rules or lease condition, it is open to the second respondent to pass final order in accordance with law. I make, it clear that if the petitioner makes out a case for leniency, it is always open to the second respondent to consider on the facts available before him in accordance with law.

21. With these directions, the writ petition is dismissed. No costs.