

(2009) 07 KL CK 0102

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27418 of 2008

Senso C. Scaria

APPELLANT

Vs

Director of Mines Safety

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Metalliferous Mines Regulations, 1961 — Regulation 106(2), 37(1), 44

Citation : (2009) 3 KLT 988

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : Georgekutty Mathew, for the Appellant; P. Jacob Varghese P. Parameswaran Nair, Asst. Solicitor General, S. Ambika Devi, Addl. C.G.S.C., K. Sanil Kumar, Addl. C.G.S.C., P. Vijaya Kumar, M.K. Chandra Mohan Das and Baby Kuriakose, for the Respondent

Judgement

S. Siri Jagan, J.—Petitioners filed this Writ Petition alleging that respondents 10 to 12 are doing quarrying operations without obtaining the required licences and permits from the Grama Panchayat, Pollution Control Board, Explosives Department, Geologist, Fire and Rescue Department and Police. The contention is that for using explosives in the quarry, respondents 10 to 12 are liable to take out licences under the Explosives Act and also licence from the Panchayat. From Exts.P2, P4 and P5 which are letters from the Deputy Chief Controller of Explosives, Emakulam, respondents 10 to 12 have not obtained any licence in Form 22 for possession and use of explosives as per computer data. By Ext.P5, in answer to a query from the petitioner by Ext.P4 under the Right to Information Act, the Manjaloor Grama Panchayat Secretary has intimated the petitioner that no licence has been issued to the 10th respondent for operating the quarry. The petitioner would also contend that without an explosives licences the respondents 10 to 12 cannot conduct quarrying operations using explosives. It is further submitted that under Regulation 44 of the Metalliferous Mines Regulations, a qualified manager is an essential requirement for conducting a mine. So also under Regulation 37(1) thereof, a qualified foreman has to be

appointed. The respondents 10 to 12 have not complied with the said Regulations. The petitioner also complains of violation of Regulation 106(2). The petitioner therefore seeks the following relief:

(i) Issue a writ of mandamus directing the respondent No. 1 to 9 to stop the illegal quarry operations done by the respondents No. 10 to 12 in survey No. 780/3A/2, 780/3B/2 of the Manjaloor Village, without obtaining the required licenses and certificates from Grama Panchayath, Explosives Controller, Geologist, Pollution Control Board, Police, Fire and Rescue Department and appointing qualified blaster and following the conditions of benches stipulated in the Metaliferous Mines Regulations 1961.

2. A counter affidavit has been filed by the 10th respondent, wherein he claims that he has all the licences and permits for running the quarry. As far as the licences for possessing and using explosives are concerned, the 10th respondent contends that by Ext.R 10(a) he has entered into an agreement with one Sri. K.C. Binoy Kumar who possesses a short firer permit, copy of which is produced as Ext.R.10(b). The said Binoy Kumar has an explosives licence, also a copy of which is produced as Ext.R10(d). The 10th respondent relies on Ext.R10(d) quarrying permit issued by the concerned Geologist. Ext.R10(f) is the consent issued by the Pollution Control Board. R10(g) is the licence issued by the Panchayat. With the help of those documents, the 10th respondent would contend that he is doing the quarrying operations with valid licence.

3. I have considered the rival contentions in detail.

4. At the outset, I must note that the 10th respondent has no case that he has explosives licences, and a magazine licence, although he would contend that he has already submitted an application for issuing a licence for establishing a magazine under the Explosives Act. He solely relies on Exts.R10(a), R10(b) & R10(c). But I find that in Ext.R10(b) Sri. K.K. Binoy Kumar was issued a short firer permit to conduct blasting operations using explosives in areas other than mines coming under the purview of Indian Mines Act, 1952. In the decision of this Court in Rajmohan Nair and Ors. v. State of Kerala ILR 1997 Ker. 268, this Court has held that a quarry would come under the definition of the word "mine" as defined in the Mines Act and that the Metalliferous Mines Regulations, 1961 would apply to quarries also. Therefore clearly Sri. K.K. Binoy Kumar is not authorised to conduct blasting operations using explosives in a quarry, which is a mine. That being so, Ext.R10(b) cannot come to the assistance of the 10th respondent to show that he had the requisite explosives licence. As far as Ext.R10(c) is concerned, it specifically states that the same pertains to the premises of Sri. Binoy Kumar at Arakuzha, Ernakulam, which is admittedly not the place where the 10th respondent is conducting quarrying operations. Therefore, Ext.R10(c) cannot also be pressed into service for the purpose of establishing that the 10th respondent has appropriate licences under the Explosives Act and Rules for doing blasting operations in the quarry in question. Ext.R10(d) is dated 04.08.2008 which is a quarrying permit issued by the

Geologist. Ext.R10(f) is the consent issued by the Pollution Control Board on 5.9.2008, hardly three days prior to filing of the Writ Petition. Ext.R 10(g) is issued on 28.10.2008 almost two months after the Writ Petition was filed. In the counter affidavit filed by the 10th respondent he refers to a stop memo issued by the Panchayat. Therefore, it is clear that he had been conducting the quarrying operations even before the licence was issued. That being so, as on today the 10th respondent does not have all the requisite licences particularly licences under the Explosives Act for conducting quarrying operations.

In the above circumstances, I dispose of this Writ Petition with a direction to the respondents 3 to 9 to see that respondents 10 to 12 do not conduct any quarrying operations without valid licences, permits, consents etc. required for operating a quarry particularly the explosives licences referred to above.