

(2021) 09 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 5904, 15433 Of 2021]

Sinoj Thomas

APPELLANT

Vs

District Collector And District Magistrate, Kasargode District,
Civil Station, Vidyanagar, Kasargode District, Pin
Code-671123

RESPONDENT

Date of Decision : 06-09-2021

Acts Referred:

Explosives Rules, 2008 — Rule 103

Citation : (2021) 09 KL CK 0044

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Santhosh Mathew, Arun Thomas, Jennis Stephen, Vijay V. Paul, Karthika Maria, Veena Raveendran, Anil Sebastian Pulickel, Divya Sara George, Jaisy Elza Joe, Nagaraj Narayan

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. The petitioner in WP(C) No.5904/2021, who has obtained leasehold rights over 2.2621 Hectares of property in Kasaragod District to conduct granite quarrying operations, has filed this writ petition seeking to quash Ext.P23 order and Ext.P24 communication. The petitioner is aggrieved by the requirement contained in Ext.P23 order to obtain clearance from the Standing Committee for National Board for Wildlife (SCNBWL).

2. The petitioner states that he owns leasehold right over 2.2621 Hectares of land in Re-survey No.193 in Maloth Village, Vellarikundu Taluk of Kasaragod District. The petitioner proposes to conduct granite quarrying operations and for that purpose to construct an Explosive Magazine. According to the petitioner, the land is situated 2.13 Km. away from Talakavery Wild Life Sanctuary. For mining minor minerals from land having a lease area of less than 5 Hectares, Ext.P1 Notification dated 15.05.2017 of the Ministry of Environment, Forest and Climate

Change (MoEF&CC) will not apply.

3. The District Environmental Impact Assessment Authority (DEIAA) granted Environmental Clearance (EC) to the petitioner on 25.04.2018, as per Ext.P6. Ext.P6 was issued after getting Site Inspection Report of the District Forest Officer and Expert Member. It was issued after the Sector Specific Appraisal Committee, namely the District Expert Appraisal Committee (DEAC), conducted an inspection and cleared the project. The Senior Geologist approved Ext.P7 Mining Plan. The Pollution Control Board issued Ext.P12 Consent to Operate, on 16.06.2018.

4. The petitioner submitted Ext.P13 application under Rule 103 of the Explosives Rules, 2008 before the 1st respondent-District Magistrate seeking NOC for grant of LE-3 Explosives Licence. The District Geologist gave Ext.P14 recommendation to the District Magistrate, which is favourable to the petitioner. The District Police Chief gave Ext.P15 'No Objection Certificate'. The Revenue Divisional Officer gave Ext.P17 letter recommending the entitlement of the petitioner. The Divisional Officer, Fire and Rescue Department, also gave his 'No Objection' to the 1st respondent. By Ext.P18, the Balal Grama Panchayat informed the 1st respondent that they also have no objection in granting Explosives Licence to the petitioner. The Deputy Chief Controller of Explosives issued Ext.P21 approval for the site.

5. The 1st respondent issued Ext.P19 public notice inviting objections from the public. None raised any objection. The 1st respondent issued Ext.P20 communication to the Divisional Forest Officer, District Tribal Development Officer and District Scheduled Caste Development Officer requiring to conduct enquiry and submit reports. Finally, the 1st respondent dismissed Ext.P13 application passing Ext.P23 order prohibiting all quarrying operations in the proposed site. In Ext.P23, it was stated that the petitioner is free to approach SEIAA for obtaining a valid Environment Impact Assessment (EIA) study report and Social Impact Assessment (SIA) reports from accredited agencies. The 1st respondent also ordered that a clearance from SCNBWL is also mandatory since Talakavery Wildlife Sanctuary is 1.5 Km. away from the proposed site. Consequent to Ext.P23, the conditional approval granted by the 3rd respondent-Deputy Chief Controller of Explosives was withdrawn and cancelled as per Ext.P24. The petitioner is aggrieved by Exts.P23 and P24.

6. WP(C) No.15433/2021 has been filed by the petitioners, who are residing near the proposed site, seeking to set aside Ext.P1 (Ext.P23 in WP(C) No.5904/2021) to the extent it gives liberty to the 2nd respondent (petitioner in WP(C) No.5904/2021) to approach the 1st respondent again for NOC under Rule 103 of the Explosives Rules. The petitioners in WP(C) No.15433/2021 contended that quarrying in the area is dangerous not only to human habitats but also to flora and fauna and hence the 1st respondent should not have given liberty to the 2nd respondent to approach again for NOC under Rule 103.

7. When the 1st respondent is convinced that the quarry is not feasible in the

proposed site as the same is a threat to the people in the area and the environment, the 1st respondent could not have granted liberty to the 2nd respondent to approach again for NOC. The petitioners in WP(C) No.15433/2021 asserted that the proposed site is only 1.5 Km. far from the Talakavery Wildlife Sanctuary.

8. The 1st respondent filed a counter affidavit in WP(C) No.5904/2021. According to the 1st respondent, in view of Ext.R1(a) OM dated 08.08.2019 of the Ministry of Environment, Forest and Climate Change (MoEF&CC), proposals involving projects located in 10 Km. of National Parks/Wildlife Sanctuaries where final EFL Notification is not notified, or ESZ Notification is in draft stage, prior clearance from SCNBWL is mandatory. The 1st respondent stated that the ECs issued by the DEIAA are not valid now and only SIEAA can issue EC as per National Green Tribunal Order in O.A. No.5220/2016 dated 11.12.2018. The proposed quarry is situated within 1 Km. radius from forest land and 1.5 Km. from Talakavery Wildlife Sanctuary. The DEIAA omitted to consider this aspect while issuing EC to the petitioner.

9. The 1st respondent in his latest report stated that the site is within 2 Km. of wildlife habitat and is abutting the Reserve Forest and hence a decision in favour of Explosives Magazine cannot be taken by the Forest Department. The Tribal Development Officer has reported that the Pamathattu Tribal Colony is 100 metre far from the site and in the 200 metre surroundings there are 80 Malavettuvan ST families residing. A small water stream which is the only water source of the Tribal families during summer will be polluted by the proposed quarrying. This is a landslide prone area. The District Officer, SC Development Office, has reported that there are two SC families living in the slope area.

10. The site was again inspected on 17.03.2020 and it was observed that the site had a deep slope of 450 and was also of ecological importance and having drinking water sources. Therefore, NOC can be issued only after getting detailed study report. Thiruvananthapuram, Hence, a report was sought from SEIAA, on 07.07.2020, contended the 1st respondent.

11. Heard the learned counsel for the petitioners in both the writ petitions and the learned Special Government Pleader (Forests).

12. Ext.P23 order of the 1st respondent shows that the reason for rejection of the application of the petitioner for grant of NOC under Rule 103 of the Explosives Rules is that the proposed quarry will affect the normal life and well-being of the people in the locality and the life of flora and fauna. The 1st respondent has also stated that since the Talakavery Wildlife Sanctuary is situated about 1.5 Km. away from the site, clearance of the SCNBWL is mandatory.

13. The 1st respondent has concluded that the quarry would affect the normal life of the people and hence all quarrying activities at the site is prohibited. Whether the 1st respondent can prohibit quarrying operations in an area

permitted by competent authorities while considering an application for NOC for Explosives Licence under the Explosives Rules, is a moot question. However, since the findings of the 1st respondent relate to adverse effect on public life, the concern of the 1st respondent and legality of his Ext.P23 order has to be verified.

14. In the observations made by the 1st respondent in Ext.P23, the 1st respondent has found that the proposed quarrying area does not come under the purview of the Ecologically Sensitive Area. The further finding of the 1st respondent is that dependence of the local ST population in this area for drinking water is 100 metres away, is not a valid reason. The 1st respondent, however, observed that it has to be inferred from the National Green Tribunal Order that where quarrying operations are on the strength of NOC issued by the DEIAA, such quarries are permitted only to operate till the expiry of lease period. Hence, the petitioner cannot start a new quarry on the strength of DEIAA NOC. As per the OM dated 08.08.2019 of MoEF&CC, prior clearance from SCNBL is required.

15. The objections for grant of NOC based on ESA norms and water pollution have been rejected by the 1st respondent himself. As regards the findings based on ECs given by the DEIAAs, this Court has held in the judgment in WP(C) No.17148/2020 and connected cases that when authority of a DEIAA to issue EC as on the date of its issuance is not disputed, the EC has to be treated as valid. The National Green Tribunal has not cancelled all the ECs issued prior to its order. Therefore, the said reason is not sufficient to decline NOC to the petitioner under Explosives Rules.

16. The further reason advanced by the 1st respondent is that as per OM dated 08.08.2019 of the MoEF&CC, proposals of projects located within 10 Km. of National Park/Wildlife Sanctuary where final ESZ notification is not notified or ESZ notification is in draft stage, prior clearance from SCNBL is mandatory. The requirements under the said OM dated 08.08.2019, are as follows:

"(i) Proposals involving developmental activity/project located within the notified Eco-Sensitive Zones (ESZ) shall be regulated and governed by the concerned ESC notification.

However, for the developmental project/activity located within the notified ESZ and covered under the schedule of the EIA Notification 2006, prior clearance from Standing Committee of the National Board for Wildlife (SCNBL) is mandatory in such cases, the project proponent shall submit the application simultaneously for grant of Terms of Reference as well as wildlife clearance.

(ii) Proposals involving developmental activity/project located outside the stipulated boundary limit of notified ESZ and located within 10 km of National Park/Wildlife Sanctuary, prior clearance from Standing Committee of the National Board for Wildlife (SCNBL) may not be applicable. However, such proposals from environmental angle including impact of developmental activity/project on the wildlife habitat, if any, would be examined by the sector specific Expert Appraisal Committee and appropriate conservation measures in the form of

recommendations shall be made. These recommendations shall be explicitly mentioned in the environmental clearance letter and shall be ensured by the member secretary concerned.

(iii) Proposals involving developmental activity/project located within 10 km of National park/Wildlife Sanctuary wherein final ESC notification is not notified (or) ESC notification is in draft stage, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) is mandatory. In such cases, the project proponent shall submit the application simultaneously for grant of Terms of Reference/environmental clearance as well as wildlife clearance.

(iv) Proposals involving mining of minerals within the ESZ (or) one kilometer from the boundaries of National Parks and Sanctuaries whichever is higher is prohibited in accordance with the order of the Hon'ble Supreme Court dated 04.08.2006 in the matter of T.N. Godavarman Thirumulpad vs.VOI in WP(C)No.2020 of 1995 and dated 21.04.2014 in the matter of Goa Foundation v. UOI in WP(C) No.435 of 2012."

Sub Clause (i) relates to projects within ESZ and hence would not apply to the case of the petitioner.

17. Sub Clause (ii) requires that for the projects located outside the boundary limits of notified ESZ and located within 10 Km. of National Park/ Wildlife Sanctuary, prior clearance from SCNBWL may not be applicable. However, the proposals should be examined by Sector Specific Expert Appraisal Committee and appropriate conservation measures may be recommended. In the case of the petitioner, proposal has been examined by a Sector Specific Expert Appraisal Committee before issuing EC. Therefore, there is no question of violation of Ext.P8.

18. Sub Clause (iii) would apply only to those areas within 10 Km. of National Park/Wildlife Sanctuary wherein final ESZ notification is not notified or where ESZ notification is in draft stage. In the case of Talakavery Wildlife Sanctuary, the notification was already published on 15.05.2017 as per Ext.P1, even prior to the OM dated 08.08.2019. Hence, Sub Clause (iii) will not apply to the project of the petitioner. As regards Sub Clause (iv), it will apply only to proposals within ESZ or 1 Km. from the boundaries of National Parks and Sanctuaries. The petitioner's proposal will not fall within any ESZ or within 1 Km. from any National Park or Wildlife Sanctuary. Therefore, Sub Clause (iv) will also not apply. The reason advanced by the 1st respondent based on Ext.P8 is therefore not sustainable.

19. The 1st respondent has based his decision primarily on the adverse impact of the proposed quarry, on the neighbouring population. It has to be noted that the Pollution Control Board has addressed the issue of pollution and has given Consent to Operate the Quarry, as per Ext.P12, after assessing the adverse impact that may be caused by the petitioner's proposed quarry. An expert authority, DIEAA, has considered the probable adverse environmental impact that may be caused by the proposed project and has given

20. In such circumstances and in view of the findings made hereinabove, this Court is of the firm view that Ext.P23 order and Ext.P24 consequential communication cannot stand the scrutiny of law. Exts.P23 and P24 are therefore set aside. The 1st respondent is directed to reconsider Ext.P13 application of the petitioners in the light of the findings and observations made in this judgment and pass orders afresh, within a period of one month. As the order impugned by the petitioner in WP(C) No.15433/2021 is being set aside, no further orders are called for in the said writ petition.

The writ petitions are disposed of as above.