

(2013) 04 SHI CK 0077

In the High Court Of Himachal Pradesh

Case No : C. Review No. 60 of 2013 in CWP No. 5275 of 2012

Smt. Meera Chandel

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2013) 04 SHI CK 0077

Hon'ble Judges : V.K. Sharma, J;R.B. Misra, J

Bench : Division Bench

Advocate : K.D. Sood, Mr. Onkar Jairath and Sanjeev Sood, for the Appellant; J.K. Verma, Parul Negi, Deputy Advocates General for Respondents 1 to 3 and 5 and Mr. Manish Sharma, Advocate, for the Respondent

Judgement

CMP (M) No 416 of 2013

1. The present application has been moved to condone the delay in filing review petition. We have gone through the contents of the present application and also heard the learned counsel for the respondents. In peculiar facts and circumstances and averments made in paragraphs 2, 3 and 4 of the application, the delay is liable to be condoned. Accordingly, the delay is condoned and the review petition is heard on merits.

C. Review No. 60 of 2013

The present review petition has been preferred by the petitioner for review of judgment/order dated 21st November, 2012 passed in CWP No. 5275 of 2012 (Smt. Meera Chandel Vs. State of H.P. & others).

2. It is submitted that an application along supported documents and fee has been submitted before the State Geologist of State of Himachal Pradesh for grant of mining lease of installation of stone crusher and for extraction of sand, stone and bazri on land measuring 4.7 hectares. Keeping in view the recommendations of concerned Authorities, the State Government granted mining lease in favour of

the petitioner on 12.12.2011 and accordingly provisional registration was issued to petitioner Unit on 15.2.2012 for installation of stone crusher. The petitioner Unit accordingly was registered under the Himachal Pradesh Value Added Tax Act as well as Central Sales Tax Act. The petitioner installed the stone crusher unit and for execution of the mining lease, deposited the requisite stamp duty. However, despite inspection of Unit of the petitioner by the Pollution Department, the execution of the lease deed was delayed, in such situation, the petitioner filed a writ petition No. 5275 of 2012 seeking direction to the respondent Authorities, more particularly to the Director of Industries to execute the mining lease deed in favour of the petitioner, so that permission of the Pollution Board may be obtained to run the stone crusher.

3. This Court (DB) vide judgment and order dated 21st November, 2012 (Annexure R-1) directed the respondent Authorities to permit the petitioner to execute the lease deed in terms of lease already granted to the petitioner on 12.12.2011 after fulfilling some formalities before making the stone crusher operational.

4. In reference to the above judgment dated 21st November, 2012, the petitioner approached the Authorities and the lease deed of the petitioner in respect of the mining and stone crusher was executed accordingly on 28.12.2012 by the Director of Industries.

5. While arguing on behalf of the petitioner, our attention has been drawn by Mr. K.D. Sood, Senior Advocate to the judgment dated 14.9.2012 of this Court (DB) passed in Civil Review No. 154 of 2012 (Court on its own motion Vs. The Chief Secretary to the Govt. of H.P. & others) along with other connected Civil Review Petitions. It has also been submitted that the said judgment dated 14.9.2012 was not in the knowledge of the petitioner earlier. It has also been submitted that the petitioner is also identically situated and be given similar treatment as has been given to other applicants covered by the judgment of this Court dated 14.9.2012 mentioned above.

6. As referred in the judgment dated 14.9.2012, replying upon the order of the Apex Court in SLP Nos. 19628/209 and 19629/209, titled Deepak Kumar etc. v. State of Haryana and others etc., this Court (DB) had given the following directions:-

1. In case where the lease was granted after 27.2.2011, one year shall be reckoned from the date of grant of lease deed regardless of the fact whether the lease was granted for one year or for more years.

2. There may be cases where the lease were granted prior to 27.2.2011 and were granted for a period of more than one year in such an eventuality period of one year shall be reckoned from the date of the lease deed falling between 27.2.2011 and 27.2.2012. To explain this we may give an example. Supposing a lease deed was granted on 15.9.209 for a period of five years then this period of one year shall commence from 15.9.2011.

5. In view of the above discussion, we direct that in all leases which were executed prior to 27.2.2012 the lessees shall be permitted to operate the mining lease for a period of one year from the date of the lease deed as explained above and it will be required to obtain Environmental clearance before the lease renewal. In those cases where the mining lease were executed after 27.2.2012 the mining operation should be stopped forthwith and will be permitted to continue only in case environmental clearance is granted. We may make it also clear that lessees may apply for grant of environmental clearance and if such application is moved, the same should be deposited within 15 days from the receipt of complete application.

7. For convenience, other paragraphs of the judgment dated 14.9.2012 are extracted as below:-

3. It has been urged before us that as far as those persons who had initially applied for area of less than 5 hectares are concerned, there was no requirement that they should seek environmental clearance. The State had placed before us material to show that where the mining lease is for an area less than 5 hectares granted prior to 27.2.2012 when the order was passed by the Apex Court, mining activities were being allowed to continue till the currency of period of mining. It was in this light, we had passed the aforesaid directions.

4. Now it has been urged before us that it is impossible to obtain environmental clearance in a period of less than 18 months because of the various formalities involved and it has been prayed that the lessee may be permitted to continue with the mining activities till the period of completion of mining lease and only if the mining lease has to be renewed then the environmental clearance should be asked for.

Keeping in view the aforesaid submissions and the legal provisions which clearly shown that about 1-11/2 years are required to obtain environmental clearance we feel that the request of the review petitioners is justified to a certain extent. We, therefore, clarify that our earlier directions dated 15th June, 2012 shall apply only in respect of those lease holders who had originally applied for mining lease of more than 5 hectares but had later reduced it to less than 5 hectares. In case of those lease holders who had applied for mining lease at the initial stage for the area less than 5 hectares, the mining activities shall be permitted to continue till the expiry of the mining lease or till 31st August, 2013 whichever is earlier. This gives a period of 11/2 years to the lessees to obtain the environmental clearance. We also make it clear that as and when such a lessee applies for environmental clearance his case(s) shall be considered on priority basis and it shall be disposed of in accordance with law before 31st August, 2013. The review petitioners are allowed to the aforesaid limited extent. We may again clarify that as far as those lessees who had applied for grant of mining lease for areas exceeding 5 hectares but had later reduced it to less than 5 hectares are concerned, the previous order shall continue to apply with full force and vigour.

8. We have heard the learned counsel for the parties and have also perused the documents. The petitioner had already applied for mining lease on the land measuring less than five hectares and mining lease initially was granted in favour of the petitioner on 12.12.2011 and subsequently, in view of judgment dated 21.11.2012 passed in CWP No. 5275 of 2012, the lease in favour of the petitioner was executed on 28.12.2012 by the respondent No. 2. It has been submitted on behalf of the petitioner that at least 11/2 years are required to take environmental clearance and since the petitioner has already established the stone crusher after fulfilling all the formalities, therefore, in the light of observations made by this Court in judgment dated 14th September, 2012, the petitioner may be allowed to run the stone crusher.

9. Keeping in view the aforesaid facts and circumstances and observations made in judgment dated 14.9.2013 in paragraph 3 of the judgment, the judgment and order dated 21.11.2012 passed in CWP No. 5275 of 2012 is reviewed as per the provisions of Order 47 Rule 1 of the Code of Civil Procedure. The petitioner if applies within fifteen days of this order to the concerned authorities of concerned Government alongwith all necessary documents and certified copy of this order, and to the concerned Government or Department for processing and for grant of environment Impact Assessment and for environmental clearance, in such circumstances, the application of the petitioner shall be considered and dispose of in accordance with law.

10. In order to sub-serve the interest of justice, in the mean time, the petitioner be also treated similarly like the other petitioners in judgment dated 14.9.2012 passed in Civil Review No. 154 of 2012 and the petitioner is allowed to carry out the mining activities and to operate the stone crusher till expiry of mining lease of the petitioner or up to 11/2 years from the date of passing of this order, whichever is earlier and in the mean time the petitioner shall make endeavour to obtain the environmental clearance. The respondents No. 2 to 5 shall ensure that the petitioner may be facilitated in carrying out the about directions. In view of the above observations, the review petition is allowed to the aforesaid limited extent.

C.M.P. No. 416 of 2013

In view of the disposal of the main petition, the present application also stands disposed of.

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