

(2010) 06 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 2749 of 2009

Sreekumar

APPELLANT

Vs

Geologist

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21
Kerala Minor Minerals Concession Rules, 1967 — Rule 4, 8(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1)

Citation : (2010) 3 KLT 295

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Joby Jose Kondody, S. Sreekumar, P. Martin Jose and Alias M. Cherian, for the Appellant; Lakshmi Narayanan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Writ Appeals are filed against common judgment of the learned single Judge see Manikantan Nair Vs. Geologist, declaring Clause (e) of Sub-rule (1) of Rule 8 of the Kerala Minor Mineral Concessions Rules, 1967, hereinafter called the "Rules" as invalid and impermissible under the enabling provision contained in Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. In the W.P.C taken up along with Writ Appeals, the prayer is for direction to the respondents to permit the petitioner to use mechanical device for mining sand. We have heard counsel appearing for appellants, counsel for the petitioner, Government Pleader for State and it's agencies and standing counsel appearing for the Velloor Grama Panchayath.

2. Petitioners in the WPCs are wet land owners who challenged the above Rule on the ground that mechanical mining of sand in the neighbouring paddy lands permitted under the Rule causes various problems to them and destruction of their property. However, in the Writ Appeal stage, petitioners even after receipt

of notice, have not appeared in Court either through counsel or in person. The above rule declared invalid by the learned single Judge confers right on the permit holder to mine sand using mechanical device. For easy reference we extract hereinbelow the rule impugned in the WPCs and the enabling provision under which the same was prescribed by Government:

8. Conditions on which quarrying permit shall be granted.- (1) Every quarrying permit granted under Rule 4 shall be subject to the following conditions, namely:

...

(e) Quarrying permit holder shall have the right for the purpose of the quarrying to use any mechanical devices including jackhammer and pump.

(2) Every quarrying permit granted under Rule 4 shall be subject to such other conditions as the competent authority or the officer granting the permit, as the case may be, may deem necessary in regard to the following matters, namely:

...

Section 15. Power of State Governments 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.

(1A) 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) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

...

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(h) the manner in which the rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

The contention raised by the petitioners in the W.P.C and accepted by the learned single Judge was that Section 15 does not enable the State to make Rule 8(1)(e) conferring right on the mining licence holders to engage mechanical devices for mining. Another contention raised was that Rule 8(1) was unconstitutional

inasmuch as it violates Article 21 of the Constitution of India in relation to neighbouring owners and the public. The learned single Judge upheld the challenge against the rule on both the grounds and declared it invalid against which Writ Appeals are filed. In support of his findings, the learned single Judge has referred to Division Bench decision of this Court in *Soman Vs. Geologist*, wherein this Court upheld the permit conditions prohibiting mining within 75 metres from a railway line and 50 metres from water tanks, reservoir, canals, etc.

3. Counsel for the appellants contended that the impugned rule, namely, Rule 8(1)(e) is perfectly within the powers of the State u/s 15(1) of the Act, which authorises the State Government to make rules for all purposes in connection with quarrying or mining licences granted under the Rules. Government Pleader appearing for the State also supported the stand of the appellants that the impugned rule is within the rule-making powers of the Government u/s 15(1) of the Act. Even though counsel appearing for the Panchayath did not support the appellants, he contended that Panchayath is not totally against mining using mechanical devices but they are more concerned about the welfare of neighbouring owners and public at large, who may be affected on account of adverse effect of mechanical mining. In our view, the judgment of the learned single Judge is not sustainable because State has power u/s 15(1) of the Act to regulate mining through licences to be issued subject to conditions which the Government is free to impose. In fact, when mining is regulated by State and licences for mining are issued subject to conditions, State has all incidental powers to prescribe any rule for the purposes connected with mining. Admittedly all mining licences are issued with strict conditions in regard to depth to which mining is permitted, margins to be left to the neighbouring property, conditions to be satisfied by the licence holder including the duty to fill up the mined pit formed on account of mining. Therefore adverse impacts on environment are neutralised through the conditions imposed in the mining licence. Similarly neighbouring owners and their properties are protected by imposing strict conditions in the mining licence issued under the Rules. The impugned rule was introduced on 12.3.2008 which itself was to get over certain judgments of this Court imposing restrictions on mining with mechanical devices. Article 19(1)(g) of the Constitution of India gives right to the citizen to practice any profession or to carry on any occupation, trade or business, which obviously means that right can be exercised to carry on the trade or business successfully and profitably. If mining cannot be done successfully or profitably by engaging human labour, licence holder is absolutely free to use mechanical devices so that mining is done profitably. All what is required is that while engaging mechanical devices, licence holders shall not violate any of the conditions of licence. The learned single Judge has considered the adverse impact that could be caused on account of mechanical mining and he assumed that using of mechanical device will result in environmental pollution and damage to neighbouring properties. So long as licence is issued subject to conditions, then it is for the licence holder to carry on mining without any violation, irrespective of the fact that the machine employed

by them is capable of mining beyond the limits permitted. In other words, so long as machines employed are used for mining in accordance with terms and conditions of licence issued, nobody can have any objection. In other words, licence holder is free to engage any permissible method for mining whether mechanical or manual and the only condition is that mining should be done in accordance with the terms and conditions of licence. In our view the later part of Section 15(1) giving power to the State Government to make rules for the purposes connected with mining gives power to the State Government to grant the right to mine by using mechanical devices. We are of the view that Rule 8(1) (e) is only clarificatory in nature and that licence holder is free to engage any mechanical device and the only restriction is that mining should be done only in accordance with terms and conditions of licence. We therefore reverse the findings of the learned single Judge and hold that it was perfectly within the powers of the Government u/s 15(1) to prescribe the above Rule.

4. The next question to be considered is whether the impugned Rule can be declared violative of Article 21 of the Constitution of India by assuming that use of mechanical device to mine sand can affect the neighbouring owners and also local public. We are of the view that the apprehension of the learned single Judge is without any merit or basis because mining is permitted with restrictions to protect the interest of the local public, neighbouring owners, etc. In fact, while granting mining licence, the licensing authority visits the location of the mining, neighbours affected, chances of pollution, etc., and impose such conditions to ensure that no environmental problem is caused and similarly no damage is caused to the neighbouring owners. In fact, pollution can be caused on account of mining even when mining is done without mechanical device. Pollution is an aspect on which another agency exercises powers on the licence holder. The apprehension of pollution expressed by the learned single Judge on account of mechanised mining in our view is absolutely out of place and unreal. We therefore do not find that impugned Rule in any way violates Article 21 of the Constitution of India inasmuch as it does not permit or justify pollution during mechanised mining. In fact there is no allegation of pollution caused during mining which takes place in uninhabited watery land and in any case all aspects of pollution are dealt with under the Pollution Control Act, a Central legislation.

5. Incidentally we are constrained to observe that the findings in the judgment are thoroughly unrealistic because it is common knowledge that mining of sand from land covered by water is possible only by engaging hi-tech machines, pumps, etc. Therefore in our view it is thoroughly wrong to assume that sand mining can be done without the aid of mechanical devices. Employment of hi-tech machines in mining to some extent saves human life as well because human labour engaged in sand mining in the land covered by water is always at the risk of land slide and even drowning. We therefore feel that the Rule authorising mechanical devices for mining helps safety of people also. Government should certainly ensure proper compliance of mining conditions by licensees, particularly filling up for mined pit which can also be done employing mechanical devices.

Writ Appeals and Writ Petition are consequently allowed by vacating the judgment of the learned single Judge, and by upholding the validity of the impugned Rule and declaring the appellants and petitioner's right to use mechanical devices including pumps for mining in terms of the licences.