

(2024) 04 KL CK 0234

In the High Court Of Kerala

Case No : Writ Petition (C) No.42572 Of 2023

Sri. Shylesan T.S

APPELLANT

Vs

Kerala State Pollution Control Board District Office

RESPONDENT

Date of Decision : 25-04-2024

Acts Referred:

Citation : (2024) 04 KL CK 0234

Hon'ble Judges : Viju Abraham , J

Bench : Single Bench

Advocate : Philip J.Vettickattu, Neenu Bernath, Saju S. Dominic, T.Naveen, Akhil Ganesh, Advdaisy. A. Philipose, Jai George

Final Decision : Disposed Of

Judgement

Viju Abraham, J.

1. Petitioner has approached this Court challenging Ext.P8.
2. It is averred that the petitioner is a grantee of Ext.P1 quarrying lease with respect to an extent of 3.4260 hectares of land comprised in block no. 25, in re-survey nos.48/1(pt) and 48/2(pt), in Erumely North Village, Kanjirappally Taluk, Kottayam District. Petitioner submits that he is conducting quarrying operation after obtaining necessary clearance/consent/license from the other statutory authorities concerned, copies of which are produced as Exts.P2 and P4 to P6. By Ext.P7 petitioner has submitted an application for renewal of consent to operate before the 1st respondent and requisite fee was also paid as evident from Ext.P7(a). Thereafter petitioner has approached this Court filing W.P.(C) No.28218 of 2023 wherein Ext.P3 interim order was passed directing the respondents to consider the application by referring to the notification issued by the MoEF. But the said application has now been rejected by Ext.P8 stating that the application cannot be considered since O.A.No.44 of 2023 is pending before the National Green Tribunal, Principal Bench, New Delhi and that the application will be considered only after the final disposal of the Original Application by the

Tribunal. It is contended by the petitioner that at the time of filing of the writ petition he has not been served with any copy of the proceedings before the National Green Tribunal pending as O.A.No.44 of 2023. Petitioner submits that since no interim orders have been passed by the Tribunal restraining the 1st respondent from renewing the consent to operate the quarry or restraining the petitioner from continuing with the quarrying operations, the stand taken by the 1st respondent in Ext.P8 is absolutely arbitrary and unjust.

3. The 2nd respondent entered appearance through counsel and filed a detailed counter affidavit mainly contending that the petitioner has conducted extensive quarrying operation without complying with the prescribed norms and guidelines and that the petitioner has extracted more quantity of mineral than what is permitted as per the quarrying lease issued to him. It is in the said circumstances that the 2nd respondent has approached the National Green Tribunal filing O.A.No.44 of 2023 and the Tribunal by Ext.R2C order dated 03.03.2023 constitute a committee to visit the premises to collect relevant information and submit a factual as well as action taken report. The 2nd respondent submits that pending consideration of the proceedings before the National Green Tribunal the application submitted by the petitioner for renewal of NOC cannot be considered. An additional counter affidavit has also been filed by the 2nd respondent stating various instances of violation committed by the petitioner which was tabulated as follows:

DATE

PARTICULARS

PAYMENT

25-11-2020

Royalty, Price and Fine for illegal extraction and removal of 43 MT of GBS

Rs.28,096/-/-

06-05-2022

Royalty, Price and Fine for illegal extraction and removal of 52171 MT

Rs.38,56,312/-

18-05-2022

Royalty, Price and Fine for illegal extraction and removal of 940 M3 [332 MT] of GBS

Rs.1,94,200/-

30-05-2023

Royalty, Price and Fine for illegal extraction and removal of 108793 + 378272.9 MT of GBS [487065.9 MT]

Rs.2,99,46,681/-

Total

539569 MT [1527889.25 M3]

It is further submitted that the petitioner was impleaded in the proceedings before the National Green Tribunal and has filed an application challenging the maintainability of the complaint.

4. Learned counsel for the petitioner has filed a detailed reply to the counter affidavit preferred by the 2nd respondent wherein a contention was taken that the attempt of the 2nd respondent is only a blackmailing and pressure tactics for forcing the petitioner to purchase her ancestral home. Relying on Exts.P11 and P12 whatsapp chats the petitioner would contend that he was even threatened that complaints will be filed and the account details of the 2nd respondent was also forwarded. To which the 2nd respondent replied that it is only by a mistake that the account details were forwarded to the petitioner which was intended to be sent to a nun seeking financial assistance for the studies of her daughter and by Ext.R2D an amount of Rs.25,000/- was also paid by someone through the said nun.

5. I have considered the rival contentions of both sides.

6. It is true that proceedings are initiated and pending before the National Green Tribunal, Principal Bench, New Delhi as O.A.No.44 of 2023 which has now been transferred to the National Green Tribunal, South Zone, Chennai and re-numbered as O.A.No.117 of 2023. The 2nd respondent has no case that any interim orders have been passed by the National Green Tribunal injuncting any authorities from issuing necessary consent/licences to the petitioner. By Ext.P3 interim order this Court declared that the petitioner is entitled for getting the grant of the benefit of exclusion of the period of environmental clearance ordered by the Ministry of Environment, Forest and Climate Change in their notification dated 18.01.2021 and all the respondents-statutory authorities shall recognize such exclusion. The only reason stated in Ext.P8 for not considering the application for renewal of consent submitted by the petitioner is the pendency of O.A.No.44 of 2023 before the National Green Tribunal, I am of the view that merely for the pendency of the proceedings before the National Green Tribunal the application submitted by the petitioner for renewal of consent cannot be kept pending until and unless there is an order injuncting the said authority from considering the application for renewal. In the absence of any such orders the 1st respondent is bound to consider the application submitted by the petitioner for renewal of consent strictly in accordance with law. Since the 2nd respondent has entered appearance and filed detailed counter affidavits objecting to the consideration of the application for renewal of consent pointing out various instances of violation of the lease conditions and illegal extraction of minerals, the above writ petition is disposed of as follows:

(i) Ext.P8 is set aside.

(ii) The 1st respondent shall re-consider and pass orders on the application submitted by the petitioner for renewal of consent to operate the quarry strictly in accordance with law, after affording an opportunity of being heard to the petitioner and the 2nd respondent and take a decision on the same within an outer limit of one month from the date of receipt of a copy of the judgment.

(iii) All other contentions on both sides are left open.