

(2014) 11 CAL CK 0049
In the Calcutta High Court
Case No : M.A. No. 29 of 2014

The Andaman and Nicobar Administration and Others	APPELLANT
Vs	
Javed Hussain	RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 2015 Cal 86

Hon'ble Judges : Indira Banerjee, J; Sambuddha Chakrabarti, J.

Bench : Division Bench

Advocate : Santosh Kumar Mondal and Satish Chandra Mishra, for the Appellant; Anjili Nag, for the Respondent

Final Decision : Disposed off

Judgement

1. The appeal is directed against the judgment and order dated 12th February, 2014 passed by the learned single Judge allowing the writ application being WP No. 325 of 2013 setting aside the order dated 22nd August, 2013 of the Commissioner-cum-Secretary (Revenue) impugned in the writ petition in effect and directing the respondent-Administration to renew the permit dated 2nd May, 2011 issued to the petitioner on the same terms and conditions for one year and renewal thereafter, within three months from the date of communication of the said order. By the permit dated 2nd May, 2011 in respect of which directions for renewal have been issued, the respondent was permitted to quarrying stone and also to operate stone crushing unit till 31st December, 2011.

2. As argued by Mr. S.K. Mandal appearing on behalf of the appellants, the order under appeal was beyond the scope of the prayers in the writ petition where there was no prayer for renewal of permission to quarry.

3. The respondent filed the writ petition praying for quashing of the order dated 23rd November, 2012 of the Commissioner-cum-Secretary (Revenue), the earlier order dated 6th September, 2011 passed by the Deputy Commissioner, South

Andaman District and further sought orders directing the Deputy Commissioner as well as the Tehsildar not to restrain the petitioner from operating the crushing unit installed in the land bearing survey No. 1/P measuring 0.20 hectares situated at Brookshabad, Port Blair.

4. Renewal of the permit dated 2nd May, 2011 for a further term of one year would in effect and substance mean extension of the permission to carryout quarrying.

5. By a notification dated 17th September, 2012, the President directed the Lieutenant Governor of Union Territory of Andaman and Nicobar Islands to exercise and discharge the functioning of the State Government under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 with the Union Territory.

6. In exercise of powers conferred under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Lieutenant Governor made the Andaman and Nicobar Islands Minor Minerals Rules, 2012. Rules 7 and 8 of the said Rules provide as follows:

"7. Grant of quarry lease:-All areas identified for quarrying shall be allotted to the successful bidder by open auction.

Provided that a Government department undertaking quarrying operation under its own direct supervision shall be exempted from bidding process.

8. Bidding Process for quarry leases:--

(1) The Competent Authority shall publish notice fixing the date of auction.

(2) There shall be at least thirty clear days between the date of publication of the notice and the date fixed for auction.

(3) The notice of auction shall also indicate the minimum reserve price for each quarry below which bids will not be accepted."

7. In view of the statutory rules, quarry lease are to be granted to the highest bidder by open auction. Knowing this, the respondent did not seek extension of quarrying rights.

8. The question is whether the respondent was entitled to orders for renewal of the permission to operate the crusher.

9. The crusher was all along being operated at survey No. 1/P where quarry operations were being carried out. The right to quarry has now been given to a different party not even impleaded in the writ petition. There can be no question of the respondent being allowed to operate a crusher on the aforesaid land.

10. Ms. Anjili Nag submitted that the crusher unit can be operated at which is presently being operated or be dismantled and operated at some other places subject to permission being given by the respondent authorities to permit the

petitioner-respondent herein to operate a crusher.

11. The operation of crusher unit is governed by the guidelines notified vide Notification No. 257 dated 23rd November, 2012. The criteria for setting up of Stone Crusher Unit as contained in the said guidelines are as follows:

"A. Location criteria for setting up of Stone Crusher Units

1. Distance of the SCU from Road.

a) In case of ATR - The Crusher Unit should be installed beyond a distance of 100 mtrs., from the ATR (distance to be measured from midpoint of the road).

b) In case of Rural Road (other than ATR) - Crusher Units should be installed beyond a minimum distance of 50 mtrs. (distance to be measured from midpoint of the road).

2. Distance of the SCU from the Residential Area.

a) The minimum distance of SCU from the residential area should be 100 mtrs.

b) The Crusher Units should be installed in commercial area/leased plot.

c) The minimum distance of the SCU from the schools and health institution should be 500 mtrs.

The distance of SCU from school/health institution should be measured from the outer most boundary of the school/health institution premises.

The "Residential Area" for the purpose is defined as an area having minimum 15 households residing in close vicinity over an area of 5000 Sqm.

3. Distance of the SCUs from the water body.

The minimum distance of the Crusher Unit from any water body should be 200 mtrs. The distance shall be calculated from the nearest edge of the water body.

No SCU should be set up in notified catchment area.

B. Minimum area required for setting up of the SCU.

a) The commercial area required for installation of roller Crusher Unit should be 200 Sqm. in South Andaman District and 500 Sqm. for other Districts.

b) In case of SCU having conveyor system, minimum area required for the SCU should be 1000 Sqm. for all Districts.

c) The SCU's should have proper vegetation/greenery in the surroundings so as to arrest the dust released from the units. The units should have compound wall or barrier of G.I. Sheets of height of atleast 3 mtrs. all along their plot periphery towards road side and residential area.

C. Other Conditions.

- a) The Crusher Operators should submit the layout plan along with the applications.
- b) Preference shall be given for Stone Crusher Units which are proposed to be setup inside the complex of the quarry site.
- c) These guidelines are applicable for existing as well as new Crusher Units to be set in future."

12. Paragraph 2(b) provides that the crusher unit should be installed in commercial area/leased plot.

13. The words "commercial area" and "leased plot" are to be read conjunctively and not disjunctively. To read disjunctively and illegally the provision would be absurd for it would be open to any crusher unit to claim permission to operate in any commercial area under any right to permission whether the crusher unit is to be operated.

14. Crusher unit should be installed in commercial area/leased plot is to be construed to mean that the crusher unit should be installed in a leased plot in a commercial area the operator of the crusher unit should have some right to remain on the plot whether as lessee or as tenant or licensee of a lessee.

15. Mrs. Nag pointed out that two other crusher units have been allowed to continue. However, even any crusher unit is wrongly been allowed to continue, the permission to continue may be cancelled. There can be any right to equality to a wrongful permission in contravention to guidelines.

16. The appellants however admitted that there are 26 crusher units so have been allowed to operate as they have tie-up agreement with those granted quarrying rights. In the instant case, the respondent did not have any tie-up agreement. In our view, the order under appeal is liable to be set aside and quashed since the respondent neither has right to carryout quarrying which has not even been claimed in the writ petition nor has any right to operate a crusher on plot of land to which the respondent has no right whatsoever. However, in the event, the petitioner is able to enter into a tie-up arrangement for operation of the crusher unit with the persons having quarrying rights or with lease holders, it will be open to the petitioner to renew its prayer for permission to operate the crusher unit and such prayer shall be considered in accordance with the guidelines.

The appeal is disposed of.