

(2023) 01 KL CK 0114

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25464 Of 2022

Vinod V

APPELLANT

Vs

Joint Secretary, Industries Department, Government
Secretariat, Thiruvananthapuram Pin 695001

RESPONDENT

Date of Decision : 12-01-2023

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 22
Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015
— Rule 32

Citation : (2023) 01 KL CK 0114

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

**Advocate : Santhosh Peter, P.N.Anoop, M.S.Sandeep Sudhakaran, Rohit Lobo,
Deepa Narayanan**

Final Decision : Dismissed

Judgement

N. Nagaresh, J

1. The petitioner, who is doing Granite aggregates sale with valid permits, is before this Court seeking to quash Exts.P5 and P9. Ext.P5 is a Stop Memo which restrained the petitioner from storage and sale of minerals as his Dealers Licence is not renewed. Ext.P9 is a decision of the 1st respondent-Joint Secretary to the Government directing the District Geologist to levy and recover the penalty amount from the petitioner.

2. The petitioner states that the 3rd respondent-Geologist has issued licence to the petitioner to stock, sell and exhibit for sale of minerals, under the Kerala Minor Mineral Concession Rules, 2015. Ext.P1 licence was issued for storing 4000 MT minerals valid till 16.09.2021. The petitioner states that he could not apply for renewal of licence in time due to the non-availability of Certificate from National Highways Authority. The petitioner, however, applied for renewal on 11.10.2021.

3. Thereupon, an Assistant Geologist visited the site and recorded that there is discrepancy in stock. The 3rd respondent-Geologist issued requests to the 4th respondent-Village Officer and the SHO to stop the functioning of the petitioner's business. When the petitioner approached the 3rd respondent for renewal of licence, the 3rd respondent issued Ext.P5 Stop Memo and Ext.P6 demand notice for `85,872/-. The appeal filed by the petitioner against demand notice was rejected by the 1st respondent-Joint Secretary, Industries Department as per Ext.P9.

4. The petitioner states that Ext.P6 demand notice is illegal as there was no show-cause notice preceding Ext.P6. There was no proper inspection. Statutory formalities were not followed before issuing Ext.P5 Stop Memo. The petitioner's appeal was not properly considered. Exts.P5 and P9 are therefore liable to be quashed, contended the petitioner.

5. The 3rd respondent-Geologist resisted the writ petition. The 3rd respondent submitted that the petitioner holds two Dealers licence. One is situated near the NTPC Quarters Road, on the western side of Harippad Kayamkulam Stretch of NH. The other is on the eastern side of the NH. The licence of the latter unit is valid up to 12.09.2022.

6. In the routine checking, the 3rd respondent inspected the land in question and found that the petitioner had been stocking and selling granite aggregates in the guise of the Dealers Licence issued to him on the other side of the National Highway. The 3rd respondent instructed the petitioner to stop all sorts of activities in the area and also measured the quantity stocked in the premises and prepared a mahazar. The 3rd respondent requested the petitioner to put signature on the mahazar but he refused to do that. The stocked aggregates were measured and recorded in the mahazar and also took photographs of the area.

7. The petitioner has experience in the field. So, the 3rd respondent orally instructed the petitioner to come over the office of the 3rd respondent and remit fine for the variation seen in the stock. The petitioner already generated transit pass through KOMPAS Portal (Kerala Online Mining Permit Awarding Services). Verifying the online stock, it shows that 1564.04 MT of granite aggregates were stocked in the site up to 16.09.2021. But, in the field verification, it is found that only 300 MT of aggregates were stocked in the site. Instead of remitting the fine amount, the petitioner submitted renewal application on 11.10.2021 for stocking and selling of granite aggregates in the land in question. The 3rd respondent has no objection to renew the application after compounding the offence as per rules.

8. As per Rule 32 of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015, any offence punishable under the rules may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 or Clause (ii) of Rule 2 of the rules to make a complaint to

the Court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify.

9. Rule 33 says that the Police Officers and Officers of Department of Land Revenue to render assistance to authorities under the rules. The Police Officers and Officers of Department of Land Revenue shall render necessary assistance to the Competent Authority or the authorised officer in the exercise of his powers under these rules in the matter of prevention of illegal mining, stocking and transportation of minerals.

10. In this context, the petitioner has to pay the royalty price and fine for the stock variation of 1264 MT of granite aggregates in the petitioner's site. But, the petitioner refused to obey the rules. The 3rd respondent on 13.10.2021 sent a letter to the Station House Officer, Harippad and the Tahsildar, Karthikappally to take stringent action to stop all sorts of activities in the land in question. Matter was also intimated to the Village Officer, Chingoli and the Secretary, Chingoli Grama Panchayat. Based on the letter of the 3rd respondent, the Station House Officer, Harippad on 13.10.2021 directed to issue stop memo to the petitioner and offered help from the Station House Officer to stop the illegal activities by the petitioner. As per the request from the Station House Officer, Harippad, the 3rd respondent immediately issued notice to the petitioner on 20.10.2021 to stop all sorts of activities in the petitioner's stocking yard.

11. Instead of remitting the fine amount, the petitioner approached this Court with W.P.(C) No.24061/2021. This Court by judgment dated 01.12.2021 held that "It is submitted by the learned counsel for the petitioner that as against Exts.P2 and P3, the petitioner has moved a statutory appeal which may be disposed of at the earliest. Without prejudice to the right of the petitioner to pursue the statutory appeal and with a direction to the respondents to consider and pass orders on the same expeditiously, this writ petition is closed".

12. Based on the judgment, the petitioner approached the Joint Secretary, Industries and filed an appeal petition. The appellate authority-Joint Secretary, Industries (A) Department conducted a hearing. The petitioner's counsel and the 3rd respondent were heard on 21.03.2022. Based on the hearing, the Joint Secretary gave direction to the Director of Mining and Geology to appoint a Geologist from the Directorate of Mining and Geology and to conduct a detailed investigation and also directed to verify the register of the petitioner and the office of the 3rd respondent.

13. The 2nd respondent appointed a Geologist from the directorate for detailed investigation. Based on the report from the Director of Mining and Geology, the appellate authority passed the final order in appeal petition on 02.08.2022. The petitioner approached this Court against the order of the appellate authority and filed this writ petition. The petitioner is still doing the business without obtaining valid licence from the authority concerned, pointed out the 3rd respondent.

14. I have heard the learned counsel for the petitioner and the learned Senior

Government Pleader representing the respondents.

15. It is evident from the pleadings and arguments that the petitioner is running two granite aggregates units, one on the western side of Harippad- Kayamkulam Highway and one on the eastern side. The Dealers Licence of the Unit at western side of the National Highway expired on 16.09.2021. However, the petitioner has stocked and exhibited materials at the western side unit, on the basis of the other licence. Field verification showed that the petitioner has stocked 300 MT in the western unit of which the licence stood expired.

16. The petitioner has to pay royalty and fine for the 1264 MT of granite aggregates. The petitioner refused to pay. Hence, notice was issued. Later, a Demand Notice was issued. The petitioner filed an appeal which was dismissed by the Joint Secretary as per Ext.P9. Ext.P9 is a considered and reasoned order.

17. The petitioner has unauthorisedly without licence stored for exhibition and sale granite aggregates in the unit in question. I do not find any procedural irregularity in the action taken by the respondents in issuing Exts.P5, P6 or P9.

The writ petition is therefore without any merit and it is hence dismissed.