

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

WP(C) NO. 22463 OF 2022

PETITIONER:

SAHARA GRANITES,
ERIMAYUR, PALAKKAD, PIN 678 546,
REPRESENTED BY ITS MANAGING PARTNER,
SRI. BIJU M.

BY ADVS.
PHILIP J. VETTICKATTU
SAJITHA GEORGE
NEENU BERNATH

RESPONDENTS:

1 THE DISTRICT GEOLOGIST,
PALAKKAD DISTRICT,
MINING AND GEOLOGY DEPARTMENT,
OFFICE OF THE DISTRICT GEOLOGIST,
PALAKKAD 4.

2 THE DIRECTOR,
MINING AND GEOLOGY DIRECTORATE,
KESAVADASAPURAM, PATTOM PALACE P.O.,
TRIVANDRUM 4.

BY SMT. SURYA BINOY, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.08.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

CR

N. NAGARESH, J.

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W.P.(C) No.22463 of 2022
.....

Dated this the 2nd day of August, 2022

J U D G M E N T

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The petitioner-Company, which holds a Quarrying Lease, seeks a declaration that the petitioner is liable to submit Scheme of Mining only 120 days before the expiry of five years reckoning from 26.07.2018 and to direct the respondents not to insist for submission of Scheme of Mining before the due date granted in terms of Ext.P9.

2. The petitioner was originally granted three Quarrying Leases for a total extent of 6.8869 Hectares of land in Erimayur-1 Village, Alathur Taluk in Palakkad District. The petitioner was issued with three approved Mining Plans

on 07.06.2017, after the introduction of the Kerala Minor Mineral Concession Rules, 2015. The three plots were lying contiguously. The petitioner submitted application for amalgamation and the Director, Mining and Geology issued proceedings dated 30.04.2019 ordering amalgamation of the three leases. The petitioner thereupon submitted a composite Mining Plan.

3. The Environmental Clearance (EC) was issued to the petitioner on 05.12.2014 with validity up to 04.12.2019. Since the validity of EC was for a period less than the Project Life of the Mine which is 18 years, the petitioner approached this Court and this Court directed the SEIAA to revalidate the EC. While so, the Ministry of Environment, Forest and Climate Change, Government of India issued SO No.1807(E) dated 12.04.2022 whereby the validity of EC of the petitioner stood extended up to the mine life/ project life.

4. In spite of the extension of validity of the EC, the petitioner was not issued with Transit Passes/ Movement Permits. The petitioner filed W.P.(C) No.18517 of 2022 and

this Court passed Ext.P6 interim order dated 13.06.2022 directing the Geologist to issue Transit Passes/ Movement Permits to the petitioner pending disposal of the writ petition. Thereafter, the Geologist, as per Ext.P7 order, decided to issue Movement Permits/Transit Passes.

5. When the petitioner attempted to make online application for Movement Permit through the Departmental Portal KOMPAS, access was denied to the petitioner on the ground that no Scheme of Mining is found for the year 2022-2023. The petitioner states that he had submitted three separate Mining Plans in 2017 and after amalgamation of three Mines, the petitioner had submitted fresh composite Mining Plan which was approved on 28.02.2018.

6. As per Rule 67 of the Kerala Minor Mineral Concession Rules, 2015, the petitioner has to submit a Scheme of Mining only 120 days before the expiry of the first five year period for which the Mining Plan was approved on the last occasion. Therefore, the approved Mining Plan of the petitioner is due for review only by 27.02.2023. The

petitioner is legally required to submit a review plan only by 27.10.2022, ie., 120 days before the expiry of the period, contends the petitioner.

7. The Senior Government Pleader resisted the writ petition. On behalf of the 1st respondent, the Senior Government Pleader submitted that on perusal of the records, it was found that Mining Plan was approved in respect of the quarrying lease on 28.02.2018 and movement permits were issued during the financial year 2017-'18. Financial year 2017-'18 has to be considered as the first year. By 2021-'22, the 5th year is completed. Since the period of five years is complete, a Scheme of Mining has to be submitted by the petitioner afresh.

8. The impugned direction is perfectly in tune with the provisions of the Minor and Minerals (Development and Regulation) Act, 1957 (hereinafter, 'the Act') and the rules made thereunder, contended the Government Pleader. The term 'year' has not been defined in the Kerala Minor Mineral Concession Rules, 2015. As per Rule 2(2), words and

expressions used but not defined in the rules and defined in the Act shall have the meanings respectively assigned to them in the Act and the rules made thereunder. The term 'year' is not defined in the Act. However, it is defined in Mineral Conservation and Development Rules, 2017. Rule 2(z) defines 'a year to mean' 12 months period beginning from the first day of April and ending on 31st day of March the following year. Therefore, this definition alone can be employed for the purpose of Rule 67(2).

9. Ext.P9 letter is only a clarification on how the period has to be calculated after the system has been migrated to KOMPAS, states the Government Pleader. Even in Ext.P9 letter from the 2nd respondent, the reference is to the year in which Movement Permit was first issued in the KOMPAS portal. The writ petition is therefore without any merit and is liable to be dismissed, states the Government Pleader.

10. The fact that the petitioner holds an approved composite Mining Plan, Ext.P5, issued on 28.02.2018 under

the Kerala Minor Mineral Concession Rules, 2015 is not in dispute. The approved Mining Plan has a validity of five years. However, the petitioner is not able to upload an application for issuance of Movement Permits in the official portal KOMPAS since the portal is designed to calculate the five year period based on the Financial Year of issue of approved Mining Plan.

11. The Senior Government Pleader would urge that the design of the Portal is in tune with the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder. The term 'year' is not defined in the Act, 1957 or the KMMC Rules, 2015. As per Rule 2(2) of the KMMC Rules, words and expressions used but not defined in the Rules and defined in the Act shall have the meaning respectively assigned to them in the Act and the Rules made thereunder.

12. The term 'year' is defined in the Mineral Conservation and Development Rules, 2017 and as per Rule 2(za) of the Rules, 2017, 'year' means the 12 months period

beginning from the 1st day of April and ending on the 31st day of March of the following year. Though the Rules, 2017 may not apply to the Quarrying Lease of the petitioner, the said Rules can be used as an interpretative tool, while considering the provisions of the KMMC Rules, 2015, contends the Senior Government Pleader.

13. The Senior Government Pleader would point out that Rule 53 of the KMMC Rules makes Mining Plan a prerequisite for grant of Quarrying Lease. Rule 55(v) of the Rules makes submission of annual programme and plan for excavation of the precise area from “year to year” for five years, a prerequisite for approving a Mining Plan. The term “year to year” in Rule 55(v) would only mean that it is the financial year which is relevant for annual plan, contends the Senior Government Pleader. Rule 55(i)(c) also uses the term “five year period”, points out the Government Pleader.

14. I have heard the learned counsel for the petitioner and the learned Senior Government Pleader representing the respondents.

15. In the case of the petitioner, when they uploaded their application for issuance of Movement Permit, access was denied. The Portal indicated that “no mining scheme is found for the concession for the current financial year (2022-2023)” and the petitioner was required to contact the DMG office for further clarification. This was in spite of the fact that the existing Mining Plan was current and was due for review only on 25.07.2023.

16. The defence of the respondents is that the composite Mining Plan held by the petitioner is not valid for the financial year 2022-2023. The Director of Mining and Geology has issued Ext.P9 Circular dated 21.04.2022 clarifying that the Five Year period for the purpose of filing Scheme of Mining is to be reckoned by referring to the year in which details of Quarry Lease were in the COMPAS Portal and Movement Permit was issued. The details of Quarry Lease of the petitioner was uploaded on 26.07.2018. Hence, the Mining Plan will become due for review only on 25.07.2023. But, the respondents have taken a stand that

Ext.P9 Circular will apply only to those Mining Plans which are approved after the date of the Circular.

17. Assuming that Ext.P9 Circular will not apply, it has to be noted that Quarry Leases were issued to the petitioner when Mining Plans were not insisted for minor minerals. Mining Plans were made mandatory on the introduction of KMMC Rules, 2015 as per Rule 66. Ext.P5 is the Mining Plan of the petitioner approved on 28.02.2018. The Mining Plan is valid till 27.02.2023. The petitioner has to submit application for renewal of the same only 120 days prior to that date, i.e., in the month of October, 2022.

18. The application for Movement Permit sought to be uploaded by the petitioner was not accepted by the Portal KOMPAS for the reason that no Mining Scheme is found current for the Financial Year 2022-'23. It implies that the Mining Plan of the petitioner approved on 28.02.2018, is valid for the Financial Year 2017-'18 to 2021-'22 only. The question is whether the respondents are justified in taking five Financial Years for the validity of the 5-Year Mining Plan,

which, in fact, spreads over to six Financial Years.

19. Rules 66 and 67 of the Kerala Minor Mineral Concession Rules, 2015, which deal with the Mining Plan to be submitted by the existing Lessee and review of Mining Plan, read as follows:

66. Mining plan to be submitted by the existing lessee-

(1) Where quarrying operations for minor minerals have been undertaken before 7th day of February, 2015 without an approval mining plan, the holder of such lease shall not be permitted to operate such quarry unless he submits a mining plan for the remaining period of lease to the competent authority in this behalf.

(2) xxxxx

(3) xxxxx

(4) The competent authority may approve the mining plan submitted by the lessee under sub-rule (1) or require any modifications to be carried out in the mining plan and the lessee shall carry out such modifications and resubmit the modified mining plan for approval of the competent authority.

(5) The competent authority shall within ninety days from the date of receipt of the mining plan or the modified mining plan convey its approval or disapproval to the applicant and in case of disapproval it shall also convey the reasons for disapproving the said mining plan or the modified mining plan.

(6) If no decision is conveyed within the period stipulated under sub-rule (5) the mining plan or the modified mining plan shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated.

(7) The mining plan under sub-rule (1) shall be prepared by a recognised qualified person.

67. Review of mining plan-

(1) Every mining plan duly approved under these rules shall be valid for the entire duration of the lease.

(2) The owner, agent, mining engineer or manager of every quarry shall review the mining plan as prescribed under sub-rule (1) and submit a scheme of mining for the next five years of the lease to the competent authority for approval at least one hundred and twenty days before the expiry of the first five year period for which it was approved on the last occasion.

(3) The competent authority shall convey its approval or refusal to the scheme of mining within ninety days of the date of its receipt.

(4) If approval or refusal of the scheme of mining is not conveyed to the lessee within the stipulated period, the scheme of mining shall be deemed to have been provisionally approved and such approval shall be subject to final decision whenever communicated.

(5) Every scheme of mining submitted under these rules shall be prepared by a recognized qualified person as stipulated under sub-rule (2) of Rule 54.

20. Rule 66 states that where quarrying operations are undertaken before 07.02.2015 without an approved Mining Plan, the holder of the lease shall not be permitted to operate such quarry unless he submits a Mining Plan for the remaining period of lease. It indeed indicates that the Mining Plan so obtained under Rule 66 is to be operational for the

remaining period of the lease. There is no indication whatsoever in the rule that the Mining Plan should cover entire Financial Year. The rule does not even contemplate a Mining Plan covering any Financial Year.

21. The requirement of Rule 67(1) is only that every Mining Plan duly approved under the rules shall be valid for the entire duration of the lease. Rule 67(2) provides that for review of the Mining Plan, the owner of a quarry shall submit a Scheme of Mining for the next five years of the lease, 120 days before the expiry of the first five year period. The argument of the respondents is that since Rule 67(2) speaks of 'Scheme of Mining for the next five years', the five year period should be five Financial Year period.

22. Assuming that the five year period prescribed for the reviewed Scheme of Mining under Rule 67(2) is five Financial Years, even then the said Financial Year period cannot be made applicable to the duration of the first Mining Plan approved under Rule 66. When the language of Rule 66 is clear, there is no necessity to import the definition of

the term 'year' from the Mineral Conservation and Development Rules, 2017 which has no application to minor minerals, whose application is specifically excluded as per Rule 2(iii).

For the reasons stated hereinabove, the writ petition is disposed of declaring that the petitioner is liable to submit a Scheme of Mining only 120 days before the expiry of five year period from 28.02.2018. The respondents are consequently directed not to insist the petitioner to submit Scheme of Mining before the due date. The respondents are further directed to give access to the petitioner to the Portal KOMPAS to upload application for Movement Permit or in the alternative, to accept application for Movement Permit directly from the petitioner and issue Movement Permit, if the petitioner is otherwise eligible.

Sd/-

N. NAGARESH, JUDGE

aks/01.08.2022

APPENDIX OF WP (C) 22463/2022

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF RELEVANT PAGES ON THE QUARRYING LEASE EXECUTED BETWEEN THE PETITIONER AND THE STATE DATED 2.5.2012, VALID UPTO 1-5-2024 WITH RESPECT TO LAND COMPRISED UNDER SY. NO. 35/2.
- Exhibit P1(a) TRUE COPY OF RELEVANT PAGES OF THE QUARRYING LEASE EXECUTED BETWEEN THE PETITIONER AND THE STATE DATED 2.5.2012, VALID UPTO 1.5.2024 WITH RESPECT TO LAND COMPRISED UNDER SY. NO. 35/2.
- Exhibit P1(b) TRUE COPY OF RELEVANT PAGES OF THE QUARRYING LEASE EXECUTED BETWEEN THE PETITIONER AND THE STATE DATED 2.5.2012, VALID UPTO 1.5.2024 WITH RESPECT TO LAND COMPRISED UNDER SY. NO. 35/2 & 35/3.
- Exhibit P1(c) TRUE COPY OF ORDER DT. 30.04.2019 ISSUED BY THE DIRECTOR, MINING AND GEOLOGY DEPARTMENT, AMALGAMATING 3 LEASES.
- Exhibit P2 TRUE COPY OF THE RELEVANT PAGES OF MINING PLANS SUBMITTED WITH RESPECT TO THE LEASES APPROVED ON 7.6.2017.
- Exhibit P3 TRUE COPY OF THE RELEVANT PAGES OF MINING PLANS SUBMITTED WITH RESPECT TO THE LEASES APPROVED ON 7.6.2017.
- Exhibit P4 TRUE COPY OF THE RELEVANT PAGES OF MINING PLANS SUBMITTED WITH RESPECT TO THE LEASES APPROVED ON 7.6.2017.
- Exhibit P5 TRUE COPY OF THE RELEVANT PAGES OF THE COMPOSITE MINING PLAN APPROVED ON 28.2.2018.
- Exhibit P6 TRUE COPY OF INTERIM ORDER IN W.P.C NO. 18517/2022 PASSED BY THIS HON'BLE COURT.
- Exhibit P7 TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 30.06.2022.

- Exhibit P8 TRUE COPY OF THE SCREENSHOT OF THE MESSAGE APPEARED IN THE OFFICIAL SITE OF THE RESPONDENT.
- Exhibit P9 TRUE COPY OF THE CIRCULAR DT. 21.4.2022.
- Exhibit P10 TRUE COPY OF SCREEN SHOT SHOWING THE SUBMISSION OF QUARRY LEASE DETAILS BEFORE THE RESPONDENT DTD. 28.4.2012.