



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2024



PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 22698 OF 2023 (GM-FOR)

BETWEEN:

M/S THAKUR INDUSTRIES.,
A PARTNERSHIP FORM
REPRESENTED BY ITS PARTNER,
MR. PRAKASH LALWANI,
S/O SHREE MANGILAL LALWANI,
AGED ABOUT 39 YEARS,
NO.F2, I FLOOR, R K KUTEERA NO.48,
29TH WARD, BDCC BANK COLONY,
M.J. NAGAR, HOSPET-583 201.

...PETITIONER

(BY SRI. LAKAMAPURMATH CHIDANANDAYYA.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY,
FOREST DEPARTMENT, M.S.BUILDING,
BANGALORE-560 001.
2. PRINCIPAL CHIEF CONSERVATOR OF FOREST,
ARANYA BHAVAN, MALLESHWARAM,
BANGALORE-560 003.
3. CHIEF CONSERVATOR OF FOREST,
BELLARY DIVISION,
BELLARY-583 101.





4. DEPUTY CONSERVATOR OF FOREST
BELLARY DIVISION, BELLARY-583 101.
5. DEPUTY CONSERVATOR OF FOREST
VIJAYANAGAR DIVISION,
VIJAYANAGAR DISTRICT,
HOSPET-583 201.
6. DEPUTY CONSERVATOR OF FOREST
KOPPAL DIVISION, KOPPAL-577 126.

...RESPONDENTS

(BY SRI.S S MAHENDRA., GOVERNMENT ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS WHICH RESULTED IN INSISTING UPON THE PETITIONER TO OBTAIN SECOND FOREST TRANSIT PASS FOR TRANSPORTING THE IRON ORE MINERAL FROM THE RAILWAY SLIDING TO THE FACTORY PREMISES AS SAME IS CONTRARY TO LAW LAID DOWN BY THIS HON'BLE COURT IN W.P.NO.24072 OF 2005 IN RESPECT OF M/S.KIRLOSKAR FERROUS INDUSTRIES LIMITED AND CONFIRMED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN W.A.NO.726 OF 2008 VIDE ANNEXURE- E AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

1. Petitioner -Firm which has been running mining business is knocking at the doors of writ court seeking a 'Writ of Mandamus directing the Respondents not to insist upon the Petitioner to obtain the 2nd forest transit pass for transporting the iron ore mineral from the railway sliding to the factory premises...'. Learned counsel appearing for



the Petitioner, in support of his submission, places reliance on a Co-ordinate Bench decision and the text of Rule 3 of the Karnataka (Prevention of Illegal Mining, Transportation and Storage of Minerals) Rules, 2011.

2. After service of notice, the Respondents have entered appearance through the learned Additional Government Advocate and vehemently opposed the Petition contending that the Karnataka Minor Mineral Concession Rules, 1994 having been amended post Division Bench decision, it is imperative for any transporter to obtain the forest transit pass as a pre-condition for transporting the iron-ore mineral.

3. Having heard the learned counsel for the parties and having perused the Petition papers, we are broadly in agreement with the submission of the learned Additional Government Advocate that in addition to permits & passes to be issued by the Department of Mines & Geology, the Amended Rules require a Forest Way Pass to be issued by



the Deputy Conservator of Forest, if the Mining Lease is located in a forest land.

4. The above view gains textual support from the provisions promulgated in Chapter II of the 2011 Rules. Sub-Rule (3) of Rule 3 reads as under:

“(3) Mineral Dispatch Release Order (MDRO): The Competent Authority on a verification of the correctness of the information provided in the application shall release Mineral Dispatch Release Order in Form 2 to the lessee under intimation to the Agency authorised to issue Mineral Dispatch Permit. The Competent Authority shall issue the Mineral Dispatch Release Order within three working days from the date of application which is complete in all respects. Copy of the Mineral Dispatch Release Order shall be marked to the jurisdictional Deputy Conservator of Forest, if the Mining Lease is located in a forest land. The Deputy Conservator of Forest shall issue Forest way pass (FWP) to the Lessee.”

(Emphasis is ours)

The marked lines indisputably indicate the underlying purpose of prescribing the requirement of Forest Way Pass. It serves a laudable purpose viz., protecting the forests from the possible damage/loss by the Agencies that transport the mineral concerned. The submission that



such a requirement arises only when the transportation of the mineral is undertaken directly from the forest location, is bit difficult to countenance. Had it been the object, the text of the Rule would have been much different. Even otherwise, a Rule of the kind needs to be construed in a way that serves its purpose. Such State measures have to be understood in the light of Forest Jurisprudence built by the Apex Court in a catena of decisions rendered in ***T.N.GODAVARMAN THIRUMALPAD vs UNION OF INDIA, 2022 LiveLaw (SC) 540*** which *inter alia* discussed role of the State under Public Trust Doctrine and its duty to protect natural resources so that *sustainable development* can be achieved in the long run. Viewed thus, learned Additional Government Advocate's submission merits acceptance.

5. The other submission of learned counsel appearing for the petitioner that the matter is no longer *res integra*, in view of the Co-ordinate Bench decision in ***RAI BAHADUR SETH SHREERAM NARASINGDAS***



PRIVATE LIMITED vs THE STATE OF KARNATAKA,
W.P.No.56386/2017 (GM-FOR) disposed off on
19.03.2020, is bit difficult to countenance. Some how the
Rule aspect of the matter was not brought to the notice of
the said Bench and therefore the decision cannot be taken
as an authority for the proposition canvassed before us.
In it lie elements *sub silencio* and therefore its
precedential value is doubtful.

In the above circumstances, this Petition being
devoid of merits is liable to be and accordingly dismissed,
costs having been made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Snb,
List No.: 1 Sl No.: 20