SUPREME COURT OF INDIA

Tvl Sundaram Granites

Vs.

Imperial Granities Ltd

(S Majmudar and D Mohapatra JJ.)

13.10.1999

ORDER

D.P. MOHAPATRA, J.

1. Leave granted.

2. The controversy raised in this case relates to grant of lease for quarrying coloured granite under the Tamil Nadu Minor Mineral Concession Rules, 1959 (for short 'the Rules'). The appellant M/s TVL Sundaram Granites and the respondent No. 1 M/s Imperial Granites Ltd. had submitted applications before the Government of Tamil Nadu for grant of lease in respect of portions of survey No. 443 in Karandepalli Village, Denkani Kottai Taluq of District Dharampuri. The total area of Survey No. 443 is about 68 acres. While the appellant applied for 10 acres out of survey No. 443, the application of the respondent No. 1 was for 4.05 hectares out of the same survey no. The portion overlapping in the two applications was to an extent of two acres. The State Government considered the application of the appellant under the provisions of the Rule 39 of the Rules and granted a lease in respect of an area often acres by G.O.Ms No. (3D) 23 Industries (E.II) Deptt. dated 22.1.1996. By a separate order passed on the same day the application submitted by respondent No. 1 was returned by the State Government with a direction to rectify the defects pointed out by the high level committed set up by the state Government. In pursuance of the government order a lease was executed by the Collector of Dharampuri district in favour of the appellant on 11.2.1996. Thereafter the appellant commenced quarrying in the area.

3. The first respondent filed Writ Petitions Nos. 3114 and 3315 of 1996 seeking quashing of the order granting lease in favour of the appellant and for a direction for grant of a lease of the area applied for in its favour. The appellant herein was impleaded as the respondent in the writ petitions.

In the Writ Petitions learned single Judge of the High Court while issuing notice granted interim injunction against the appellant which was continued by a subsequent order. Feeling aggrieved by the order of injunction the appellant filed Writ Appeal No. 480/96 in which the Division Bench of the High Court permitted the appellants to continue quarrying operations in the area under the lease excluding the overlapping portion. Writ Appeal No. 480/96 and Writ Petition Nos. 3114 and 3115/96 were heard together and disposed of by the Division Bench by the Judgment dated 9.9.1997 which is under challenge in this appeal. The Writ Petitions filed by the respondent No. 1 were allowed and the Writ Appeal filed by the appellant was dismissed. The operative portion of the impugned Judgment reads as follows:

In view of the totality of the facts and circumstances stated above, we are of the considered view that the state has acted unfairly, secretly and denied the equal opportunity to all by passing a non-speaking order and illegally granted lease to the 5th respondent.

Thus the writ petition is allowed. The impugned order granting lease to the 5th respondent is set aside and lease deed, if any, executed is also set aside. The respondents are directed to consider the application of all the applicants pending before them and would invite applications for granting lease of the mines by public notice and would consider the case of all applicants together. Respondents are at liberty to grant lease to any of them on merit by comparing their inter-se suitability merits, public interest and interest of the development of minerals or on the basis of any other relevant considerations. The respondents are directed to complete the exercise of inviting the applications, considering and passing appropriate order of granting lease in favour of an appropriate person within a period of two months from today and till such time no mining operations should be permitted. The respondent would not take into consideration any observations made in the Judgment with respect to merit of the applicant while considering the case of the applicants for grant of lease. The writ petition is allowed. No order as to costs.

4. As noted earlier the State Government passed the order granting the lease to the appellant in exercise of the power vested under Rule 39 of the Rules. The said rule reads as follows:

39. Power of State Government to grant or renew quarry lease or permission, etc. in special cases - Notwithstanding anything contained in these rules, the State Government, if in any case, are of the opinion that in the interest of mineral development and in the public interest, it is necessary so to do, they may, by order and for reasons to be recorded-

(a) grant of renew a lease or permission, to quarry any mineral; or

(b) allow the working of any quarry for quarrying any mineral, on terms and conditions different from those laid down in these rules.

5. This provision was added in the Rules by G.O.Ms 97/Industries (MMBI) dated 8 March, 1993 and was omitted by G.O.Ms No. 91/Industries MMB dated and with effect from 26.6.1996.

6. The High Court in the impugned judgment has discussed in details various irregularities in passing the grant order by the State Government. Since the State Government has been directed to reconsider the applications of all the applicants who had submitted applications for grant of lease and the fresh applications which may be received after issue of notice and pass a fresh order in accordance with the Rules, we do not like to delve deep into the merits of the case of the parties.

Suffice it to say that the High Court for the reasons stated in the impugned judgment, was of the view that the State Government while granting the largess in favour of the appellant had not acted fairly and reasonably and had not kept public interest and mineral development in the State in view. The High Court also held that the State Government had not granted equal opportunity to the applicants to press their applications.

7. The position is well settled by a catena of decisions of this Court that while grant of largess is at the discretion of the State Government, its action should be open, fair, honest and completely above board. In the impugned judgment the High Court has directed the State Government to consider the matter of grant of lease for quarrying granite in the area in question afresh after inviting fresh applications. As such no serious prejudice has been caused to the appellant by such direction. Therefore, we are not persuaded to interfere with the impugned judgment in exercise of jurisdiction under Article 136 of the Constitution.

8. Mr. Parasaran, learned senior counsel appearing for the appellant laid stress on the fact that the appellant has been carrying on quarrying operations in the area for the last two years on the strength of the grant order and the interim orders passed by the High Court and this Court from time to time. They have invested substantial amounts, set up machineries and engaged manpower for carrying on the operations. The entire operation will come to a halt and a number of workmen will be thrown out of employment if the appeal is dismissed without making any order for carrying on the quarrying operation during the period which the State Government will take to complete the whole exercise. Considering the said submission we are satisfied that the fact situation of the case calls for such an order.

9. Accordingly, while declining to interfere with the impugned judgment of the High Court we direct that the State Government shall complete the entire exercise within 3 months from the date of receipt of intimation of this order by the Secretary of Industries Department, State of Tamil Nadu, following the procedure laid down in the Judgment of the High Court but without being influenced by the other observations made therein, and till then the appellant shall be permitted to carry on quarrying operations on the same terms and conditions as at present. The appeal is disposed of accordingly. No costs.