

BEFORE THE NATIONAL GREEN TRIBUNAL**SOUTHERN ZONE, CHENNAI****Application No.187 of 2017 (SZ)**

In the matter of

Sri Kumaraswamy Silica Mines
Rep. by its Parnter,
P.Ravichandra Kumar Reddy
Momidi Village,
Chillakur Mandal,
Nellore District, Andhra Pradesh

.. Appellant

Vs.

1. The Secretary,
Ministry of Environment, Forest &
Climate Change,
Government of India,
Paryavaran Bhavan, New Delhi 110003
2. The Government of Andhra Pradesh
Rep. by its Secretary,
Industries & Commerce (M.III) Department,
Hyderabad.
3. The Member Secretary,
Andhra Pradesh Pollution Control Board,
Paryavaran Bhavan,
A-3, Industrial Estate, Sanath Nagar,
Hyderabad -18

.. Respondents

Counsel appearing for the appellant

M/s.V.Suthakar, K.S.Viswanathan,
N.Anantha Kavitha & M.Gopi

Counsel appearing for the Respondent

Mrs.Me.Saraswathy for R1

ORDER

Present

Hon'ble Shri Justice Dr. P. Jyothimani, Judicial Member

Hon'ble Shri P.S.Rao, Expert Member

19th September, 2017

We have heard learned counsel appearing for the applicant as well as Mrs.Me.Saraswathy, learned counsel appearing for MoEF & CC who has produced a communication received from MoEF & CC dated 18th September, 2017. The applicant who has obtained mining lease for the silica sand in the name of Mr.V.Ramachandra Reddy on 24.05.1975 for an extent of 512.01 acres in Momidi Village, Chillakur Mandal, SPSR Nellore District for a period of 20 years which was stated to have been transferred in favour of the applicant Firm and the mining lease having been renewed for a further period of 20 years after its expiry on 03.09.1995, has filed this application for a direction against MoEF & CC to consider the application of the applicant dated 23.11.2013 for grant of Environment Clearance (EC) based on the Terms of Reference (TOR) issued by the 1st respondent dated 10.08.2015 and also on the

recommendations of the EAC made in its 6th Meeting held on 23-24th May, 2016 to carry on mining activities in respect of mining of silica sand over an extent of 320.90 acres in Survey No.695/22 of Momidi Village, Chillakur Mandal, SPSR Nellore District after taking into account the surrender of 17.49 acres in Survey No.696 and pass appropriate orders.

In the communication of MoEF & CC dated 18.09.2017, a reference is made in respect of PIL No.22 of 2017 filed by one, Mr.Madan Kumar Reddy which is stated to be pending before the Hon'ble High Court of Andhra Pradesh. The said communication states that since the PIL is pending in the High Court of Andhra Pradesh, the proposal for EC cannot be considered.

It is further stated in the said communication that the Ministry will not grant the EC for mining when any forest land is involved unless the project proponent obtains Stage I Forest Clearance or surrenders the forest land to the State Forest Department. On such surrender to the Forest Department, the project proponent has to make a revised mining plan for the revised area excluding the forest land and get the revised mining plan approved by the Competent Authority and thereafter only the application for EC will be considered after referring again to EAC. Therefore, it is the stand of the Government that the matter is subjudice since the PIL application is pending before the Hon'ble High Court of Andhra Pradesh and part of the land in which the quarrying is to be effected, forms part of

the forest area and unless the forest land is surrendered to the State Forest Department and a certificate is issued by the Forest Department that no forest land is involved in the mine lease area, the application for EC cannot be considered.

Mr.Viswanathan, learned counsel appearing for the applicant, referring to the communication of MoEF & CC dated 18.09.2017, produced by Mrs.Me.Saraswathy, stated that in so far as it relates to 17.49 acres of land in Survey No.696 which was stated to form part of the forest area, the applicant has already surrendered the same to the State Government and in fact based on the same, the State Government has already passed orders accepting the surrender on 29.06.2017 in the Proceedings No.6111/R3-1/2016 of the Director of Mines and Geology, Andhra Pradesh, Ibrahimpatnam. The learned counsel also submits that this is the major issue which stood as impediment for the 1st respondent in not considering the application for EC. The learned counsel further stated that the applicant has already complied the other requirements which are listed by MoEF & CC in the communication dated 18.09.2017. It is relevant to extract the Para 3 of MoEF communication dated 18.09.2017 which is as follows:

1. The final order of the Hon'ble High Court of Andhra Pradesh at Hyderabad in reference to PIL No.22 of 2017-Madan Kumar Reddy vs. Union of India.

2. A certificate from State Forest Department certifying that no forest land involved in the mine lease area.
3. The authenticated past production details by Department of Mines and Geology, Government of Andhra Pradesh.
4. A copy of the Supplementary lease for the mining lease area after excluding 17.49 ha area of dispute forest land.
5. A letter from Department of Mining and Geology conforming whether there is a change required in the Mining Scheme or not.
6. A letter from the State Forest Department/ Wildlife wing stating the location of protected area like national park/ Wildlife Sanctuary within 10 km. of the mine lease area.
7. List of Flora and Fauna including the species listed in Schedule-I of the Wildlife (Protection) Act, 1972 within 10 km. of the Mine Lease area.
8. District Survey Report about the mineral in question in pursuance of S.O.141 (E) dated 15.01.2016.

The learned counsel also submits that when the surrender has been made the pendency of PIL No.22 of 2017 has no impediment. He has also produced copy of the Writ Petition (PIL) affidavit wherein the prayer is to declare the action of the official respondent Nos.2 to 10 in not taking appropriate steps for protection of Reserved Forest Land situated in Survey No.696 and 695 of Momidi Village, Chillakur Mandal, SPSR Nellore District inspite of representations made by the petitioner and not cancelling the mining lease, as malafide and illegal.

In view of the prayer made in the PIL, according to Mr.Viswanathan, the applicant herein, who is the 11th respondent in the Writ Petition,

surrendered the disputed portion which is the forest land and hence the pendency of the Writ Petition cannot be a ground for the MoEF & CC not to consider the application for grant of EC. In any event the consideration by the 1st respondent can be made subject to the final decision in the Writ Petition.

In so far as other requirements are concerned, it is his submission that the necessary compliances have been made and the MoEF & CC may consider the compliance as reported in the representation made by the applicant dated 10.07.2017 and if it is satisfied that compliance have been made as per requirements of MoEF & CC, the matter may be referred to EAC for consideration.

Mrs.Me.Saraswathy, learned counsel would submit that if the documents relating to forest are produced particularly in respect of surrendered forest land of 17.49 acres and other all other requirements are fulfilled, the MoEF & CC will forward the proposal to EAC for consideration. In view of the said statement made by both the learned counsel, we are of the view that in the event of applicant satisfying the MoEF & CC, the Regulatory Authority, about the compliance of all the requirements, the 1st respondent shall take note of the proceedings of the Director of Mines and Geology dated 29.06.2017 relating to the surrender of an extent of 17.49 acres of land in Survey No.696 as stated above as well as the report of the District Collector, SPSR, Nellore District dated 10.05.2017 addressed to

the Director of Mines and Geology, Andhra Pradesh, Ibrahimpatnam wherein it is stated that

“S.No.696 measuring 92.40 acres is classified as “Forest Reserve Poramboke”but subsequently it was changed as “Jungle Poramboke”vide Board’s order 352, dated 12.02.1913 at present it is treated as Adavi Poramboke (Jungle). He further submitted in his report that the Sy.No.695/22 of the extent 513.73 acres was classified as Government Dry Land”.

On considering the compliance of the requirements as referred to above, it is for the MoEF & CC to examine and send the matter afresh to EAC and the EAC shall pass appropriate recommendation to the Regulatory Authority to enable to pass appropriate orders. Needless to state that based on the recommendation, it is for the MoEF & CC to pass appropriate orders in the manner known to law expeditiously and such order shall be subject to the outcome of the decision in the PIL pending before the Hon’ble High Court.

With the above direction, the application stands disposed of. There shall be no order as to cost.

Justice Dr.P.Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member