

CASE NO.:
Appeal (civil) 6456 of 2001

PETITIONER:
K.T. Varghese & Ors

RESPONDENT:
State of Kerala & Ors

DATE OF JUDGMENT: 24/01/2008

BENCH:
Dr. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a Division Bench of the Kerala High Court. Challenge before the High Court was to the order passed by a learned Single Judge dismissing the Original Petition filed.

2. Background facts as projected by the appellants in a nutshell are as follows:

The appellants are engaged in the business of limeshell. They have been holding the necessary dealers' licence issued under the Kerala Minor Mineral Concession Rules, 1967 (hereinafter referred to as 'the State Rules') under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as 'the Act') and the Minor Mineral Concession Rules, 1967 (in short the 'Rules'). The appellants were given the licence under Rule 48-C of the State Rules. As per the licence the appellants got the licence to sell stock and exhibit for sale minor minerals under the Rules. Along with the licence certain conditions have also been laid down which the appellants are under obligation to comply with. When the appellants were not granted the renewal of licence for the period 1997-98, they approached the High Court by filing O.P.No.14269/1997 which was disposed of by judgment dated 16.2.1998. The appellants filed a Writ Appeal against the said judgment and the Division Bench of this Court in Writ Appeal No.547/1998 directed the first respondent to dispose of the representation filed by the appellants. Accordingly, the appellants were granted renewal of their licences for the period 1998-99.

3. The appellants' complaint is that certain conditions in the form of restrictions have been incorporated while issuing the licences. One of such conditions which the appellants attacks is that the minerals permitted to be stocked were to be purchased only from authorised quarrying permit holders on that behalf. Another condition is that they are permitted to sell the minerals only within the State of Kerala that too for domestic and agricultural purposes. The appellants' complaint is that as far as Co-operative Societies are concerned, they are not saddled with any such restrictions imposed in the case of the appellants. Thus, according to the appellants, there is a clear discrimination between the Co-operative Societies and the individuals in the matter of restrictions imposed in the licences granted to them. Apart from that there is no legal sanction for such restrictions.

4. Learned Single Judge of the High Court was of the view that the licence was granted subject to certain conditions and restrictions. The State Government was empowered to impose such conditions under the Act and the State Rules and the licences were issued in terms of provisions of the Act and the State Rules. Since the conditional licence was issued, the licencees cannot take up the benefit of licences without the conditions imposed.

5. The Division Bench in writ appeal did not specifically refer to these aspects.

6. Learned counsel for the appellants submitted that the condition that sales would be for agricultural purposes and inside the State condition cannot be imposed under the Rules.

7. Learned counsel for the State Government and its functionaries on the other hand supported the order of the High Court.

8. It appears that the impugned conditions stipulated run as follows:

\023While selling limeshell or the products made using the minerals you should give to the purchaser Cash memorandum authenticated by the undersigned/Assistant Geologist of this office before use. Please note that any consignment of minor minerals without a valid cash memorandum shall be considered as illicit and the competent authority or such authorized person may recover the mineral from the person concerned.\024

9. It is to be noted that there is no serious challenge to the Condition No.1.

10. Similarly another condition was imposed which read as follows:

\023For sale within Kerala State only for domestic and Agricultural purpose.\024

11. Primarily it has been contended that no reason has been indicated as to the basis for imposition of such conditions and there is no such prescription for licencees who were co-operative societies.

12. It is to be noted that dealer does not extract the minerals. In State of Tamil Nadu v. M.P.P. Kavary Chetty [1995 (2) SCC 402] considering a similar challenge it was inter alia observed as follows:

\02317. Rules 8-D and 19-B were introduced into the said Rules by Government Order No. 214 dated 10-6-1992. The two rules are identical, except that Rule 8-D is in Section II which relates to Government lands in which the minerals belong to the Government and Rule 19-B is in Section III which relates to ryotwari land in which the minerals belong to Government. This being so, it is enough to quote Rule 19-B. It reads thus:

\02319-B. Constitution of black, red, pink, grey, green, white or other coloured or multi-coloured granites or any rock suitable for use as ornamental and decorative stones quarried by the permit-holder etc. -(1) Notwithstanding anything contained in these rules, on and from 10-6-1992 the sale of the quarried black, red, pink, grey, green, white or other coloured or multi-coloured granites or any rock suitable for use as ornamental and decorative stone by every permit-holder who has been granted permission by the State Government and every person who has been permitted by a competent court having jurisdiction, for quarrying black, red, pink, grey, green, white or other coloured or multi-coloured granites or any rock suitable for use as ornamental and decorative stone, shall be regulated by the State Government or by an officer of the State Government or by a State Government company or by a corporation owned or controlled by the State Government, as the State Government may direct in this behalf. (2) Where the above sale is regulated by\027

(i) the State Government or by an officer of the State Government, the minimum price shall be as fixed by the State Government;

(ii) the State Government company or a corporation owned or controlled by the State Government, the minimum price shall be as fixed by the said company or corporation, as the case may be:

Provided that in fixing the minimum price under this sub-rule, the fair market price prevailing at the time of the sale shall be taken into account.\024

18. On the same day that Rules 8-D and 19-B were introduced, that is, 10-6-1992, Government Order No. 216 was also issued. It directed, under the provisions of the two rules, that the Tamil Nadu Minerals Limited, a State Government company, would regulate the sale of quarried black, red, pink, grey, green, white or other coloured or multi-coloured granite or any rock suitable for use as ornamental and decorative stones.

19. The High Court quashed Rules 8-D and 19-B principally on the ground that Section 15 of the said Act gave no power to the State Government to frame rules to regulate internal or foreign trade in granite after it had been quarried. Section 15 also did not empower the State Government to frame rules to enable a State Government company or corporation to

fix a minimum price for granite.

20. Learned counsel for the appellant State submitted that Rules 8-D and 19-B were valid having regard to the Preamble of the said Act and Section 18 thereof. He submitted that the rule-making power of the State under Section 15(o) was wide enough to encompass Rules 8-D and 19-B.

23. It is difficult to see how granite resources can be protected by controlling the sale of granite after its excavation and fixing the minimum price thereof.

24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (o) of sub-section (1-A) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals.\024

13. In view of what has been stated by this Court in M.P.P. Kavery Chetty\022s case (supra) the impugned conditions stipulated could not have been imposed and are accordingly struck down.

14. The appeal is allowed to the aforesaid extent without any order as to costs.