



2023:KER:39010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945

WP(C) NO. 21416 OF 2023

PETITIONER:

M/S. ADANI VIZHINJAM PORT PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT
ADANI CORPORATE HOUSE, SHANTIGRAM,
NR. VAISHNO DEVI CIRCLE,
S.G HIGHWAY, KHODIYAR,
AHMEDABAD, GUJARAT - 382 421.
AND HAVING ITS BRANCH OFFICE AT CITY OFFICE,
3RD FLOOR, ASPINWALL HOUSE, KURAVANKONAM,
THIRUVANANTHAPURAM - 695003
REPRESENTED BY ITS MD & CEO
SRI. RAJESH KUMAR JHA.
BY ADVS.
ROSHEN.D.ALEXANDER
TINA ALEX THOMAS
HARIMOHAN

RESPONDENTS:

- 1 NAGAROOR GRAMA PANCHAYAT,
OFFICE OF THE NAGAROOR GRAMA PANCHAYAT,
NAGAROOR P.O.,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY., PIN - 695601
- 2 THE SECRETARY,
NAGAROOR GRAMA PANCHAYAT,
OFFICE OF THE NAGAROOR GRAMA PANCHAYAT,
NAGAROOR P.O.,
THIRUVANANTHAPURAM., PIN - 695601
- 3 THE PRESIDENT,
NAGAROOR GRAMA PANCHAYAT,
OFFICE OF THE NAGAROOR GRAMA PANCHAYAT,
NAGAROOR P.O.,
THIRUVANANTHAPURAM., PIN - 695601

BY SRI.SIJU KAMALASANAN, SC, NAGAROOR GRAMA
PANCHAYAT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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J U D G M E N T

Dated this the 5th day of July, 2023

The petitioner-Company, is aggrieved by Ext.P20 resolution taken by the 1st respondent-Panchayat. By Ext.P20, the 1st respondent subjected Ext.P21 D&O/Trade Licence issued to the petitioner to four conditions. The respondents have no power under the Kerala Panchayat Raj Act, 1994 to make such conditions. The conditions inserted in Ext.P20 are illegal, arbitrary, and without jurisdiction, contends the petitioner. Ext.P20 is ultra vires the powers of the respondents under the Kerala Panchayat Raj Act, 1994.

2. The petitioner is the Concessionaire for Design, Build, Finance, Operate and Transfer (DBFOT) of Vizhinjam Seaport Project which is a major infrastructure project by Government of Kerala which is developed in Public Private



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Partnership (PPP) mode. By Ext.P1, taking into consideration the requirement of time bound completion of the Vizhinjam International Seaport and the shortage of rock boulders faced by the petitioner, Government decided that the petitioner shall be given priority in quarrying activities in Government land and the respective District Collectors shall give NOC to those applications for NOCs with respect to Vizhinjam Port.

3. The petitioner was issued with Ext.P2 NOC by the District Collector, Thiruvananthapuram for quarrying a Government land. The petitioner also obtained Ext.P3 Letter of Intent, Ext.P5 approved Mining Plan, Ext.P7 Environmental Clearance, Ext.P8 Consent to Operate and Ext.P9 Explosives Licence. However, when the petitioner submitted Ext.P10 application for D&O/Trade licence from the 1st respondent-Panchayat, the petitioner was informed that by Ext.P20 resolution, the Committee has decided to grant licence to the petitioner for quarrying subject to the following conditions:



1. To form a committee under the leadership of the District Collector and to verify the issues such as (i) environmental impact; (ii) possibility of disaster; (iii) whether the rocks are removed within the permissible quantity etc.;
2. Petitioner to spend the CSR fund within the limits of the Panchayat;
3. Petitioner has to withdraw the Police Protection Order against the President of the Panchayat and to give compensation to those who are affected by the disaster and that;
4. If the said conditions are not complied within a period of three months, the licence will be reviewed.

Pursuantly, the respondents have issued Ext.P21 D&O/Trade licence to the petitioner under Section 232 of the Kerala Panchayat Raj Act. Later, Ext.P22 Quarrying Lease was issued by the Director of Mining and Geology on the basis of the ancillary licences. The conditions incorporated in Ext.P20



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are illegal and in violation of the provisions of the statute, urged the petitioner.

4. Standing Counsel entered appearance on behalf of the Panchayat and resisted the writ petition. On behalf of respondents 1 to 3, it is submitted that taking into consideration the interest of the citizens residing in the Grama Panchayat area, the Grama Panchayat Committee convened a meeting on 21.02.2023 and considered the application for permission submitted by the petitioner-Company under Section 233 of the Kerala Panchayat Raj Act, 1994. The Council decided to issue licence to the petitioner on the petitioner submitting all requisite licences and permits.

5. Taking into consideration the larger public interest, the Council decided to constitute a Committee under the Chairmanship of the District Collector to monitor whether the quarrying operations would affect the environment and whether there is any possibility of disaster and also to monitor whether the removal of granite is within the



permissible limits. It was also decided that the CSR fund of the petitioner-Company should be spent within the territorial area of the Panchayat. It was further decided that the petitioner should be required to withdraw the protection order obtained by them against the President of the Panchayat. A further stipulation was made that compensation to the affected parties should be through the Local Development Committee led by the District Collector. The petitioner has not put forth any grounds to unsettle the decision in Ext.P5.

6. The Standing Counsel for the Panchayat further submitted that if any person is aggrieved by a resolution passed by the Panchayat, such person has to approach the Government to rescind such resolution invoking the provisions of Section 191 of the Kerala Panchayat Raj Act. When such a statutory remedy is available to the petitioner, the petitioner cannot be permitted to approach this Court directly filing a writ petition.

7. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the



respondents.

8. Ext.P1 would show that a High Level Committee of the Government of Kerala has considered the request of the petitioner-Company for carrying out quarrying operation in puramboke land and the application was favourably allowed. Ext.P2 is the proceedings of the District Collector issuing NOC for quarrying operations. By Ext.P3, the Director of Mining and Geology has granted a Letter of Intent. The Department of Mining and Geology has approved the Mining Plan of the petitioner as is evident from Ext.P5.

9. The State Environmental Impact Assessment Authority has issued Ext.P7 Environmental Clearance which is valid up to 22.08.2019. The Kerala State Pollution Control Board has given Ext.P8 Consent to Operate. Explosives Licence was also granted to the petitioner by the Deputy Chief Controller of Explosives, Ernakulam as can be seen from Ext.P9. It is after obtaining all requisite licences for starting operation of the quarry that the petitioner has approached the Panchayat authorities for permission under



Section 233 and licence under Section 232 of the Kerala Panchayat Raj Act.

10. When the petitioner approaches the Panchayat for permissions and licences under Sections 233 and 232 of the Kerala Panchayat Raj Act, those applications are liable to be considered on the basis of the supporting materials given by the statutory authorities. Though in Ext.P20 the Panchayat authorities have decided to give permission to the petitioner subject to the petitioner obtaining statutory licences, certain conditions are imposed in Ext.P20. The conditions imposed in Ext.P20 to which the licence is subjected, are as follows:

- (i) To determine the environmental impacts, possibility of disaster, the amount of mining carried out etc. by a committee under the aegis of District Collector.
- (ii) To ensure that the CSR funds is utilized within the Panchayat.
- (iii) To withdraw the Police Protection order against the President.
- (iv) To provide compensation to those affected by disaster through the local development committee under the aegis of District Collector and to comply with the conditions within a period of 3 months or else the D&O /Trade licence will be reviewed.



11. I find that the Panchayat Committee has decided to constitute a committee under the aegis of the District Collector, to determine the environmental impact, possibility of disaster, the amount of mining carried out, etc. These are all issues falling within the powers of the statutory authorities specifically designated for the purpose. When the State Environmental Impact Assessment Authority, the Director of Mining and Geology and the District Collector who is the Chairman of the District Disaster Management Authority have given clearances to the petitioner, constitution of a committee by the Panchayat to determine these issues is unwarranted. Formation of such a committee is not a statutory process and while issuing permissions and licences under Sections 232 and 233 of the Kerala Panchayat Raj Act, the Panchayat authorities are not justified in subjecting those permissions and licences to the decisions to be taken by a committee which has no statutory existence. The further condition is that the CSR funds of the Company should be utilised in the Panchayat.



12. Corporate Social Responsibility (CSR) implies a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. It is a concept whereby the Companies integrate social concerns in their business operations for the betterment of their stakeholders and society in general in a voluntary way. The Companies Act, 2013 makes CSR a statutory compulsion and requirement for certain categories of incorporated companies.

13. Section 135 of the Companies Act, 2013 which deals with CSR, reads as follows:

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director:

(2) Provided that where a company is not required to appoint an independent director under subsection (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

(3) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.



The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in subsection (1) shall,—

a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its 3 report and also place it on the company's website, if any, in such manner as may be prescribed; and

b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in subsection (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, [or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,] shall be inserted;] in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.



Provided further that, if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount [and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.]

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.]

(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the company financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

[(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees,



whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.]

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure provisions of this section and such company or class of companies shall comply with such directions.]

[(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.]

[Explanation: For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.]

Section 135 contemplates constitution of CSR Committees by Companies which fall under the purview of Section 135.

14. It is the CSR Committees constituted under Section 135(1) of the Act, 2013 which has to formulate a CSR policy for the Company and plan activities to be undertaken by the Company. The proviso to Section 135(5)



mandates that the Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

15. In exercise of the powers conferred under Section 135 and Section 469 of the Act, 2013 the Central Government has framed the Companies (Corporate Social Responsibility Policy) Rules, 2014. Rule 4(1) commands that the CSR activities shall be undertaken by the Company as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business. Rule 4(5) provides that the CSR projects or programs or activities that benefits only the employees of the Company and their families shall not be considered as CSR activities in accordance with Section 135 of the Act.

16. From the scheme of the Companies Act, 2013 relating to the CSR and of the Companies (Corporate Social Responsibility Policy) Rules, 2014, it is amply clear that framing CSR Policy, execution of CSR projects, programs or



activities, are completely within the domain of the Companies, to be executed through the statutory CSR Committees constituted under Section 135(1) of the Companies Act, 2013.

17. When the Companies Act, 2013 has made special provisions governing CSR funds and the Central Government has made special rules for CSR fund spending, Grama Panchayat Committees constituted under the Kerala Panchayat Raj Act, 1994 cannot impose any conditions while issuing licences and permissions, which would go against the provisions of Section 135 of the Companies Act and the Rules made thereunder. The conditions stipulated in Ext.P20 relating to CSR programs / fundings of the petitioner-Company are therefore illegal and unsustainable.

18. Another condition in Ext.P20 is that the petitioner shall withdraw the police protection order obtained by the Company against the President of the Panchayat Committee. In our democracy governed by Rule of law, any blanket condition in restraint of legal proceedings cannot stand the



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Constitutional test of arbitrariness, when such conditions are unilaterally imposed by the State or by an instrumentality of the State. Such conditions are abhorred even in the field of contracts. Section 28 of the Indian Contract Act, 1872 bars agreement that imposes fetters on a party from initiating legal proceedings or enforcing its rights. Therefore, I find that all the conditions stipulated in Ext.P20, are highly arbitrary and illegal and cannot stand the scrutiny of law.

19. Ext.P20 is therefore set aside to the extent it imposes conditions for permission under Sections 232 and 233 of the Kerala Panchayat Raj Act, 1994.

The writ petition is disposed of as above.

Sd/-
N. NAGARESH
JUDGE



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APPENDIX OF WP (C) 21416/2023

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE COPY OF THE MINUTES OF THE MEETING DTD. 03.07.2018 WHICH WAS COMMUNICATED TO THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM VIDE COMMUNICATION DTD. 05.07.2018.
EXHIBIT P2	TRUE COPY OF THE EXTENDED NOC BEARING NO. B7-17779/18 DTD. 03.03.2023 ISSUED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.
EXHIBIT P3	TRUE COPY OF THE LOI BEARING NO. 12118/M3/2108 DTD. 23.11.2018.
EXHIBIT P4	TRUE COPY OF THE ORDER BEARING NO. DMG/2879/2022-M3 DTD. 25.10.2022 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY.
EXHIBIT P5	TRUE COPY OF MINING PLAN APPROVAL ORDER BEARING NO. 2304/DOT/ML/18 DTD. 14.01.2019 ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY.
EXHIBIT P6	TRUE COPY OF THE ORDER DTD. 10.04.2023.
EXHIBIT P7	TRUE COPY OF THE ENVIRONMENTAL CLEARANCE BEARING NO, 92/Q/2022 DTD. 16.08.2022.
EXHIBIT P8	TRUE COPY OF THE CONSENT TO OPERATE BEARING NO. KSPCB/TV/ICO/10005087/2022 DTD. 27.08.2022.
EXHIBIT P9	TRUE COPY OF THE EXPLOSIVE LICENSE NO. E/SE/KL/22/331/E121778 DTD. 13.09.2022.
EXHIBIT P10	TRUE COPY OF THE APPLICATION BEARING NO. AVPPL/GOK/2021-22/2087 DTD. 29.08.2022.
EXHIBIT P11	TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT OF APPLICATION BEARING FILE NO. 400209/RPTL19/GPO/2022/2139 DTD. 30.08.2022.



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EXHIBIT P12	TRUE COPY OF THE LETTER BEARING NO. 400209/RPTL19/GPO/2022/2139 DTD. 30.08.2022.
EXHIBIT P13	TRUE COPY OF THE APPLICATION BEARING NO. AVPPL/GOK/2022-23/2088 DTD. 31.08.2022.
EXHIBIT P14	TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT OF THE APPLICATION BEARING FILE NO. 400209/RPTL19/GPO/2022/ 2139/ (2) .
EXHIBIT P15	TRUE COPY OF THE LETTER BEARING NO. 400209/RPTL19/GPO/2022/2139 (3) DTD. 05.09.2022.
EXHIBIT P16	TRUE COPY OF THE APPLICATION BEARING NO. AVPPL/GOK/2022-23/2119 DTD. 20.09.2022.
EXHIBIT P17	TRUE COPY OF THE LETTER BEARING NO. 400209/RPTL19/GPO/2022/2139 (4) DTD. 23.09.2022.
EXHIBIT P18	TRUE COPY OF THE EXTRACT OF RESOLUTION NO. 23/(1) DTD. 17.09.2022 OF THE PANCHAYAT COMMITTEE.
EXHIBIT P19	TRUE COPY OF LETTER BEARING NO. A2/2139/2022 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P20	TRUE COPY OF THE RESOLUTION OF THE PANCHAYAT COMMITTEE BEARING NO. 11 (1) DTD. 21.02.2023.
EXHIBIT P21	TRUE COPY OF THE TRADE LICENSE BEARING NO. 232/2022-2023/A-2/RPTL 19/2139 DTD. 25.02.2023.
EXHIBIT P22	TRUE COPY OF PROCEEDINGS BEARING NO. 30/2023-2024/2879/M3/2022/DMG DTD. 25.04.2023.