



ABSTRACT

Industries Department - Mines and Minerals - Directions of the Hon'ble Madurai Bench of Madras High Court in Review Application (MD) Nos. 80-82 of 2019 - Issuance of directions to the authorities of Revenue, Police, Forest and Geology and Mining Departments on seizure of vehicles and compounding of offences - Orders - Issued.

INDUSTRIES (MMC.2) DEPARTMENT

G.O.(Ms).No.170

Dated 05.08.2020

ஆடி 21, சார்வரி வருடம்,
திருவள்ளூர் ஆண்டு-2051

Read:

1. G.O.(Ms).No.1464, Industries Department, dated 08.12.1981.
2. G.O.(Ms).No.626, Industries (K) Department, dated 11.6.1986.
3. G.O.(Ms).No.167, Industries (MMC.1) Department, dated 16.06.1994.
4. G.O.(Ms).No.4, Industries (MMC.1) Department, dated 02.01.1998.
5. G.O.(Ms).No.114, Industries (MMC.1) Department, dated 18.09.2006.
6. G.O.(Ms).No.12, Industries (MMC.1) Department, dated 02.02.2009.
7. Orders of the Hon'ble Division Bench of Madurai Bench of Madras High Court dated 29.10.2018 in W.P.(MD) Nos.19936/2017 and 7595/2018 and W.M.P.(MD) No.7225/2018.
8. From the Director of Geology and Mining, D.O.Letter No.8981/MM6/2018, dated 27.11.2018 addressed to all the District Collectors.
9. Government Letter No.14148/MMC.2/2018-2 and 3, dated 05.12.2018 addressed to all the District Collectors and the Director of Geology and Mining.
10. Orders of the Hon'ble Supreme Court of India in SLP (C) Nos.33477-33479/2018, dated 11.01.2019.

(p.t.o)

11. Orders of the Madurai Bench of Madras High Court dated 09.09.2019 and 12.09.2019 in R.A.(MD).Nos. 80 to 82 of 2019 in W.P.(MD).Nos.19936 of 2017, 7595 and 21485 of 2018.
12. From the Director of Geology and Mining, Letter Rc. No. 8981/MM6/2018, dated 17.03.2020.

ORDER:

Writ Petition(MD)Nos. 19936/2017, 7595 and 21485/2018 and W.M.P.(MD) No.7225/2018 have been filed before the Hon'ble Madurai Bench of Madras High Court by Tvl. Muthu and others for prohibiting illegal sand quarrying operations in Vellar and Agniyar river of Pudukkottai and Thanjavur Districts respectively. The Division Bench of Madurai Bench of Madras High Court in its order seventh read above discussed the present procedure followed in the cases of seizure of vehicles carrying minerals illegally and directed that,

- (i) the concerned Revenue Officials to make a complaint after the seizure to the jurisdictional court preferably within a period of one week and thereafter to make appropriate application for confiscation, which might include a vehicle, said to have been involved;
- (ii) there is no bar for the Police to register a case for the offence under Section 379 of IPC along with the offence under the Mines and Minerals (Development and Regulation) Act, 1957. Whenever an offence is registered under Section 379 of IPC, it will not take away the power of Revenue officials to give a private complaint. Since, this position is already settled, the Court directed the Revenue officials to inform the police about the seizure made and in the same way, as and when a case is registered under Section 379 of IPC, the police concerned shall inform it to the Revenue Officials. Therefore, a complaint has to be made by the Revenue Officials before the jurisdictional Court and on information, case has to be registered by the jurisdictional Police. This procedure will have to be followed strictly;
- (iii) there is no way, a power of compounding can be exercised under section 23-A of the Mines and Minerals (Development and Regulation) Act, 1957, since the very power of confiscation followed by adjudication itself is not available to an authority, other than the Court.

2. The Division Bench of the Hon'ble Madurai Bench of Madras High Court finally issued the following directions:

- (i) *The District Level Task Forces and Taluk Level Task Forces, constituted pursuant to the order passed in WP (MD) No.9806 of 2018 should follow the G.O.(Ms).No.135 Industries (MMA.1) Department, dated 13.11.2009 in letter and spirit.*

- (ii) As stated in the above said Government Order, periodical meetings will have to be held which is inclusive of action taken/ to be taken for the illicit mining.
- (iii) Steps will have to be taken for dereliction of the duty by the concerned officials.
- (iv) Taluk Level Task Forces shall also comply with the directions issued in the Government Order by making frequent surprise checks and submit their report to the District Level Task Forces.
- (v) The Taluk Level Task Forces shall meet every fortnight as mandated in the Government Order.
- (vi) The responsibility fixed in the Government Order will have to be strictly construed and action will have to be taken against the erring Village Administrative Officer, Tahsildar, Officer in-charge of Department of Geology and Mining at District Level.
- (vii) Action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. The District Collector concerned shall take appropriate departmental action by himself as per the Rules provided so.
- (viii) Separate records will have to be maintained by the Village Administrative Officer, Tahsildar and Officer in-charge of the Department of Geology and Mining with respect to the cases involving illicit mining.
- (ix) As and when illicit mining is reported, the same will be recorded in the records.
- (x) The respective District Collectors will have to ensure by making wide publicity of phone particulars assigned to the District Level Task Forces and the Taluk Level Task Forces, so that, the general public can give their complaints. There should be affixture or display of the phone particulars in the Collectorate, Taluk Office, Office of Deputy Director and Assistant Director of Geology and Mining and that of the Village Administrative Officer.
- (xi) Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complaint. A Complaint shall also be received even when made through phone calls.
- (xii) Complaints by an authorized person under section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are to be made immediately and not later than one week from the date of seizure.
- (xiii) Whenever, a final report is filed for the offence under section 379 IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court. This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same Court and in order to avoid any possible conflict.

- (xiv) *The revenue officials at the time of seizure can issue a memo to the person in-charge of the vehicle, mineral among other things, indicating the seizure made, along with the date and time.*
- (xv) *In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.*
- (xvi) *Any application for release of vehicle etc., can only be filed before the Special Court alone.*
- (xvii) *Any violation of the above would constitute a contempt of the order passed by this Court, for which, appropriate application can either be filed before the First Bench of this Court or any other Bench as per the direction of the Hon'ble Chief Justice.*

3. In his D.O.Letter eighth read above, the Director of Geology and Mining has instructed all the District Collectors for compliance of the orders passed by the Division Bench of the Madurai Bench of Madras High Court seventh read above. In the Government letter ninth read above, the Government has instructed all the District Collectors to give wide publicity of G.O.(Ms.).No.135, Industries (MMA.1) Department, dated 13.11.2009 by exhibiting the contents of the Government order in prominent public places and also to issue appropriate circular to the revenue authorities to follow the directions passed by the Madurai Bench of Madras High Court scrupulously without any deviation during the time of seizure of vehicles involved in illicit mining. The Government further instructed the Director of Geology and Mining to submit a detailed report called for by the High Court of Madras regarding compliance of its directions on behalf of the Secretary, Industries Department.

4. With regard to the orders pertaining to compounding of offences passed by the Division Bench of the Madurai Bench of Madras High Court, SLP(C)Nos.33477-33479/2018 were filed by the State Government through the District Collector, Pudukkottai District. The Supreme Court of India has disposed the above SLPs in its order tenth read above, by not inclining to interfere with the order of the High Court and also held that if the petitioners have any grievance with regard to any of the directions contained in the order of the High Court, it will be open for them to request the High Court for reconsideration of the matter. Accordingly, Review Applications (MD) Nos. 80 to 82 of 2019 in W.P.(MD).Nos. 19936 of 2017, 7595 and 21485 of 2018 have been filed by the State through the District Collector, Pudukkottai District in the Madurai Bench of Madras High Court.

5. The Division Bench of the Madurai Bench of Madras High Court has dismissed the Review Applications in its order eleventh read above with the following directions:-

- (i) **"The Secretary to Government, Industries Department, Fort St.George, Chennai is directed to issue proper directions either by way of order or circular to all the persons authorized to**

exercise the power to seizure indicating the manner and the circumstances under which the power of compounding is to be exercised sparingly;

- (ii) The designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier directions with reference to making the private complaints;
- (iii) Whenever the vehicles/materials seized are produced before the Court of confiscation proceedings, the Courts concerned shall take photographs of the vehicle/material and keep the material by public auction after getting valuation report from the Motor Vehicle Inspector of the District concerned (or) the authorities concerned and shall issue sale certificate to the successful bidder and deposit the sale price to the credit of the particular case. In the event, confiscation is ordered by the trial court, the amount shall be confiscated to the Government.
- (iv) If the designated Court comes to the conclusion that the vehicle/material is not liable to be confiscated, the same shall be returned to the parties who are legally entitled to.
- (v) The applicants are directed to file an affidavit on the complaints made on the direction issued by this Court, particularly in the light of the submission made that they are not being followed. Such an affidavit will have to be filed within a period of four weeks from the date of receipt of a copy of this order".

6. The Division Bench of the Madurai Bench of Madras High Court in its further order dated 12.09.2019 has clarified that paragraph 13 Clause (xv) of the earlier order passed in the writ petitions in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 stands deleted. The Court has further clarified that in so far as the complaint given under the Mines and Minerals (Development & Regulation) Act, 1957 or the Tamil Nadu Minor Mineral Concession Rules, 1959 is concerned, cognizance can be straight away taken by the Designated Court and therefore, there is no need to file the same before the jurisdictional Magistrate.

7. Accordingly, the Director of Geology and Mining in his letter 12th read above has sent a proposal to Government. The Government carefully examined the proposal of the Director of Geology and Mining and issue following directions to all the District Collectors:-

- A. Directions to the Authorities / Officials of Revenue, Police and Geology and Mining who have been empowered with powers under sub-section (4) of section 21 of the Mines and Minerals (Development & Regulation)

Act, 1957 (Seizure Powers) i.e., for effecting seizure of vehicles involved in illicit quarrying / mining

Officials empowered to perform under section 21(4) (p.t.o) Act, 1957:

- (i) In G.O.(Ms) No.1464, Industries Department, dated 08.12.1981, orders were issued specially empowering the officers of the Revenue Department not below the rank of the Deputy Tahsildar appointed as Executive Magistrates under sub-section (1) of section 20 of the code of Criminal Procedure, 1973 to exercise the powers conferred in the said sub-section (4) of section 21 of the said Act.
- (ii) In G.O.(Ms) No.626, Industries (K) Department, dated 11.06.1986, orders were issued appointing the Assistant Director of Geology and Mining, Assistant Geologists, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) of the Department of Geology and Mining as Special Executive Magistrates for the performance of functions specified in sub-section (4) of section 21 of the said Act within their respective jurisdiction.
- (iii) In G.O.(Ms).No.114, Industries (MMC.1) Department, dated 18.09.2006, orders were issued empowering the Police Personnel not below the rank of Inspector of Police to exercise power under the sub-section (4) of section 21 of the said Act within their respective jurisdiction.

Directions to the enforcing authorities:

- (a) The officials empowered to perform under sub-section (4) of section 21 of the Act have to handover the vehicles and tools involved in illicit quarrying / mining to the concerned Police official of respective jurisdiction and to request Police Department to register FIR in the police station concerned against the offenders in connection with magazar, the seized vehicles, tools, etc. involved in illegal mining and transport of minerals.
 - (b) The officials empowered under sub-section (4) of section 21 of the Act have to send reports on the seizure of vehicles, tools, minerals, etc. made by them to the compounding authorities concerned for taking appropriate action at their end in accordance with the Act and Rules, i.e., in the case of minor mineral other than Granite to concerned Revenue Divisional Officers and in the case of Granite and Major Minerals to the District Collectors.
- B. Directions to the Authorities / Officials of Revenue, Forest and Police Departments who have been delegated with powers under section 22 of the Act for making complaint to the Designated Court (-Complaint Making Powers). (The word "Complaint" in the section-22 of the Act**

mean filing of criminal case before the appropriate criminal court of such jurisdiction i.e., by filing appropriate affidavit with fees through concerned local GP. The affidavit should be supported by the Magazar, seized vehicle's documents, Statement of Police Officials, Copy of FIR and if concerned person has been incarcerated, evidence thereof.)

Officials empowered to perform under Section 22 of the Act, 1957:

- (i) In G.O.(Ms).No.4, Industries (MMC.1) Department, dated 02.01.1998, orders were issued by the Government authorizing the Revenue Divisional Officers concerned to make complaint under section 22 of the said Act in respect of cases falling within their jurisdiction relating to minor minerals namely, building, and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay.
- (ii) In G.O.(Ms).No.167, Industries (MMC.1) Department, dated 02.02.2009, orders were issued by the Government authorizing the District Forest Officers concerned to make complaint by way of an affidavit under section 22 of the said Act in respect of cases falling within their jurisdiction.
- (iii) In G.O.(Ms).No.12, Industries (MMC.1) Department, dated 02.02.2009, orders were issued under section 22 of the said Act authorising the District Forest Officers and the Police Personnel not below the rank of Inspector of Police, to make complaint in writing by way of an affidavit to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder, in respect of cases falling within their jurisdiction.

Directions to the complaint making authorities:

- (a) After receipt of reports from the enforcement authorities concerned on the seizure made by them in respect of **Major Minerals**, viz., Limestone, Magnesite, Beach Sand Minerals, etc., the District Collector who has been delegated with powers under section 22 of the said Act has to make a complaint by way of an affidavit to the Designated Court with respect to the offence committed by the offenders under section 21 of the said Act.
- (b) After receipt of reports from the enforcement authorities concerned on the seizure made by them in respect of **Minor Minerals**, viz., Roughstone, Jelly, Sand, Earth, Gravel, etc., the Revenue Divisional Officers/Sub-Collectors who have been delegated with powers under section 22 of the said Act have to file complaints by way of an affidavit to the Designated Court with respect to the offence committed by the offenders under section 21 of the said Act.
- (c) After the seizure of vehicles by the compounding authorities for ~~contravention of sections 4(1) and 4(1-A) of the said Act~~ or after receipts of reports from the enforcing authorities on the seizure of

vehicles, tools, minerals, etc. made by them, the Officials who have been empowered to perform under section 23-A of the said Act, namely the District Collector and the Revenue Divisional Officers/Sub-Collectors concerned could make orders for compounding the offence committed for illegal mining or transport of minerals either before or after the institution of the prosecution in accordance with section 23A of the said Act and rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959. This action is only a recovery proceedings for collecting the necessary fee and penalty from the concerned person to make the loss created by him to the addition of exchequer.

- (d) The authorities authorized under section 22 of the said Act, namely the Police Personnel not below the rank of Inspector of Police have to make complaint in writing to the Court of competent jurisdiction by way of an affidavit along with necessary documents and fees for any offence punishable under the said Act in respect of cases falling within their jurisdiction.
- (e) The authorities authorized under section 22 of the said Act, namely the District Forest Officers have to make complaint in writing to the Court of competent jurisdiction by way of an affidavit along with necessary documents and fees for any offence punishable under the said Act in respect of cases falling within their jurisdiction.

C. Directions to the authorities of Revenue and Forest Departments who have been delegated with powers for compounding the offences committed under section 23-A of the Mines and Minerals (Development and Regulation) Act, 1957 and rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (Compounding Powers)

Officials empowered to perform under section 23-A of the Act,

1957:

- (i) As per rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 inserted vide G.O.(Ms).No.166, Industries Department, dated 16.06.1994 and subsequent amendments made thereof, whenever any person contravenes the provisions of sub-sections (1) and (1-A) of section 4 of the said Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officers as the case may be or in the alternative, he shall be liable to be punished as provided in sub-section (1) of section 21 of the said Act.
- (ii) As per the proviso to rule 36-A(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959 inserted vide G.O.(Ms).No.3, Industries

Department, dated 02.01.1998, in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay, the powers and duties exercisable and dischargeable by the District Collector under this sub-rule shall be exercisable and dischargeable by the Revenue District Officer concerned within their respective jurisdiction.

- (iii) In G.O.(Ms).No.4, Industries (MMC.1) Department, dated 02.01.1998, orders were issued by the Government directing that the powers exercisable by the State Government under sub-section (5) of section 21 of the said Act shall be exercisable also by the Revenue Divisional Officers concerned in respect of cases falling within their jurisdiction. Provided that the above powers shall be exercisable by the Revenue Divisional Officers only in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay.

Directions to the Compounding authorities:

- (a) After receipt of reports from the enforcing officials concerned on the seizure of vehicles made by them, the District Collector who has been delegated with powers under section 23-A of the said Act could pass orders for compounding the offences committed in respect of Granite under rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 and compounding orders could be made for major minerals in respect of the offence committed under section 21(5) of the said Act.
- (b) After receipt of reports from the enforcing officials on the seizure of vehicles, tools, etc. involved in illegal mining / illegal transport of minerals, the Revenue Divisional Officers/Sub-Collectors who have been delegated with powers under section 23-A of the said Act and rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 could pass orders for compounding the offences committed in respect of all minor minerals except Granite.
- (c) As per section 21(4-A) of the said Act, seized materials are liable to be confiscated by an order of the Court competent to take cognizance of the offence under section 21(1) of the said Act and the seized materials are to be disposed of in accordance with directions of such Court.
- (d) The Hon'ble Division Bench of Madurai Bench of Madras High Court by the order dated 09.09.2019 in Review Application (MD) Nos. 80 to 82 of 2019 has held that what is permissible to the Revenue Officials, namely the officer authorised, is only the seizure and not confiscation or disposal of such materials. The Hon'ble Court has further held that while exercising the powers of compounding or making complaint to the Court, the officer authorised cannot release

the vehicle or the other materials seized. The Hon'ble Court has also held that the question of release or confiscation rest with the Court only. The Compounding authorities, namely, the Revenue District Officers/Sub-Collectors and the District Collectors have not been vested with powers under the said Act for release of seized vehicles, tools, minerals, etc. and therefore, no orders shall be passed by the compounding authorities for release of them. But they can collect the compounding fee and penalty as per the orders of penalty as it would make the loss good in favour of the Government. In other words, the individual makes compensation to the Government for the loss made by him by way of illegal quarrying / mining.

8. The District Collectors are directed to strictly comply with the above directions and send periodical reports to Government and Director of Geology and Mining.

(BY ORDER OF THE GOVERNOR)

**N. MURUGANANDAM
PRINCIPAL SECRETARY TO GOVERNMENT**

To

All the District Collectors,
All the District Forest Officers,
All the District Superintendent of Police,
The Additional Chief Secretary to Government,
Revenue Department, Chennai - 600 009.
The Additional Chief Secretary to Government,
Home, Prohibition & Excercise Department, Chennai - 600 009.
The Principal Secretary to Government,
Environment and Forest Department, Chennai - 600 009.
The Director of Geology and Mining, Guindy, Chennai - 600 032.

Copy to:

O/o. Hon'ble Minister (Law, Courts and Prisons), Chennai - 600 009.
The Law Department, Chennai - 600 009.
All the sections in the mining wing of Industries Department,
Chennai - 600 009.
Industries (OP II) Department, Chennai - 600 009
SF/SCs.

// Forwarded By Order //

J. Chandrasekhar
SECTION OFFICER