

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOs.30166, 30603 AND 32048 of 2014

WP 30166 of 2014

Between :

Mutyala Satyavathi W/o Satyanarayana
R/o Seethanagaram village and mandal
E Godavari district

.... Petitioner

And

Govt of A P
Rep by its Prl Secretary
Industries and Commerce (Mines) Department
Hyderabad and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED

:26.8.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : / No
Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : / No
To Law Reporters/Journals :

3. Whether Their Lordship wish to see the fair : / No
Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO
WRIT PETITION NOs.30166, 30603 AND 32048 of 2014

COMMON ORDER:

Petitioners in all these writ petitions are same. The issue in these three writ petitions relate to de-casting of sand, by petitioners. Hence, these three writ petitions are disposed of by common order.

2. Petitioners obtained licence for de-casting of sand from their lands in Survey No. 67/2 and 38-6K of Seethanagaram village and Survey No. 172 of Singavaram village for a quantify of 84640 cum for a period of six months or till quantity exhausted whichever is earlier and accordingly undertaken de-casting of sand from their lands. They were also granted mineral dealer licence for selling/ storing/ trading of sand. By proceedings of the District Collector No. 3703/TP/Sand/2014 dated 27.9.2014 petitioners were directed to pay normal seignorage fee along with penalty on the allegation that they have violated the terms of A P Minor Mineral Concession Rules, 1966 (for short Rules, 1966) decasted excess sand and outside the limits granted to them and transported /sold huge quantity of sand without any authority and are liable for penal action as per Rule 26 (2) of the Rules 1966.

As a consequence to issuance of proceedings dated 27.9.2014, on the same day by separate order in same proceedings No. 3703/TP/Sand/2014 permission granted to the petitioners for de-casting of sand was terminated.

By order in proceedings No. 1888/MDRC/RJY/2014 dated 4.10.2014 of the Deputy Director of Mines and Geology, Kakinada the mineral dealer licence was cancelled. By conducting panchanama on 14.10.2014, 24065 cum of sand was seized. In these three writ petitions, petitioners assail the above orders/decisions of respondent authorities.

3. Heard Sri N Subba Rao, learned counsel for petitioners, learned Assistant Government Pleader for Industries (A) and learned Government Pleader for Revenue (A).

4. Learned counsel for petitioners submit that petitioners have been de-casting the sand from their private patta land and they have not deviated from the permission granted nor were indulging in de-casting of the sand outside the limits. He further submits that on earlier occasion a complaint was made before this Court in W.P. No. 16242 of 2014 against de-casting of sand in river bed. This Court by order dated 24.6.2014 directed the District Judge, East Godavari to enquire as to whether land of petitioners is in river bed and sand is being de-casted nearer to river course and to submit a report. Accordingly, the Special Judge-cum- X Additional District Judge, Rajahmundry made site inspection on 28.6.2014 and submitted report on 30.6.2014. It is reported that lands of petitioners are 960 meters away from river course. One more writ petition in W P No. 19356 of 2014 was filed making similar allegations. By order dated 24.7.2014 Principal Secretary, Industries and Commerce Department was directed to cause enquiry. This report also refutes allegations made against petitioners. While so, the impugned proceedings have been issued. Though, first of the proceedings camouflage as notice, it is nothing but an order as seen from the last portion of the proceedings, wherein it is held that petitioners have violated the rules 1966, de-casted the sand outside permissible limit and therefore liable for penalty and accordingly huge penalty is imposed and petitioners were directed to pay penalty within 15 days. The consequential orders/decisions were made. Learned counsel for petitioners submit that before taking such decisions fixing liability and canceling the permission/ licence granted to petitioners, no prior opportunity of hearing was given and petitioners were not put on notice. If petitioners were put on notice, they would have explained their version that they have not violated any of the permissions granted to them. Thus, all the decisions are ex-facie illegal and liable to be set aside for violation of the principles of natural justice and fair play.

5. Learned Assistant Government Pleader submits that only after due enquiry by competent authority and based on the report of the Assistant Director, Mines and Geology, impugned decisions were made and there is no illegality or irregularity in the impugned decisions and having found that petitioners are indulging in de-casting of the sand outside the land within which they were permitted to excavate, they are liable for penal

consequences in accordance with the Rules. Further more, what is directed was to pay the amount by granting sufficient time and failing which only necessary action would be initiated. Thus, petitioners ought to have complied with the notice and submitted explanation and as without exhausting the said remedy before the District Collector, these writ petitions are filed, they are not maintainable. Once it is found that petitioners have violated the conditions of permission and lease, all the consequential decisions are valid and legal.

6. As seen from the proceedings impugned in the writ petitions, there is no reference to any prior notice issued by the District Collector. The extracted portion of the report of the Assistant Director, Mines and Geology relied by the District Collector relates to allegation of de-casting of sand outside the permissible limits and excess de-casting. Based on said report only the impugned proceedings are issued by the District Collector. No independent exercise was undertaken by the District Collector. It appears report of the Assistant Director is not furnished to petitioners. Thus, on a plain reading of the said proceedings, it is clear that petitioners were not put on notice and no prior opportunity was given to them before taking penal action and levying heavy penalty. The fact that prior notice or opportunity was not given, is not disputed by respondents. When the order has got severe civil and penal consequences, no decision can be taken without following the due procedure contemplated under law and without observing principles of natural justice.

7. Having regard to the same, the two proceedings of even No. 3703/TP/Sand/2014 dated 27.9.2014 and the consequential orders in proceedings No. 1888/MDCR/RJY/2014 dated 4.10.2014 and seizure of sand dated 14.10.2014 are liable to be set aside and accordingly they are set aside and the matter is remanded to the District Collector for consideration afresh. The proceedings dated 27.9.2014 shall be treated as show cause notice and petitioners shall file their respective explanations in support of their claim within two weeks from the date of receipt of copy of this order. On receipt of such explanations, a date may be fixed for personal hearing and after affording personal hearing and on consideration of the explanations

submitted by the petitioners, appropriate orders as warranted under law be passed. The entire exercise shall be completed within three weeks from the date of receipt of explanation by petitioners. Having regard to the specific contention of the learned counsel for petitioners that there was no prior notice before holding the petitioners as violating the permission to de-cast sand on their private land and licence granted to them and directing the petitioners to pay huge penalty, I am not inclined to go into merits of rival contentions at this stage and they are left open. Learned counsel for petitioners submitted that respondents may be directed to release 24,065 cubic tones of sand which was seized and petitioners are willing to furnish bank guarantee.

8. In the circumstances, respondents are directed to release the seized sand of 24,065 cubic metric tones, subject to petitioners furnishing bank guarantee for an amount of Rs.20,00,000/- (twenty lakhs only). The bank guarantee furnished by the petitioners shall be subject to the final decision of the District Collector in consequence to impugned proceedings dated 27.9.2014.

9. Subject to above orders, writ petitions are disposed of.
No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 26.8.2015

TVK

Note : CC in one week.

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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