

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.6341 OF 2012

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DATED 2nd JULY, 2015

Between :

G.Naresh

...Petitioner

and

The Government of Andhra Pradesh, represented
by its Principal Secretary, Industries and Commerce
Department, Secretariat, Hyderabad, and others.

...Respondents

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-

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ORDER

The grievance of the petitioner was that the mining authorities of the State of Andhra Pradesh were not proportionately refunding the amounts deposited by him along with the security deposit and other taxes. His claim for refund was founded on the premise that he was prevented from fully enjoying the benefits of the quarry lease for which he had paid the said amounts.

Pursuant to the auction notification dated 05.05.2011, whereby the State sought to award leases for quarrying sand in various sand bearing areas in Visakhapatnam District, the petitioner emerged as the highest bidder for Tamarabba sand reach of Sharada River in Visakhapatnam District. This reach was notified for a minimum bid amount of Rs.3,84,000/- but the petitioner's bid was for Rs.72,99,999/-. Being the highest bidder, he was asked by the Assistant Director of Mines and Geology, Visakhapatnam, under letter dated 23.05.2011 to deposit 25% of the knocked down amount with 2% income tax, 10% security deposit, 3% education cess, 4% VAT and 5% stamp duty. In all, the petitioner claims to have deposited Rs.92,99,999/-. Under proceedings dated 28.05.2011, the Zonal Joint Director of Mines and Geology, Visakhapatnam, confirmed the petitioner's bid and he was called upon to take necessary steps for execution of the quarry lease. The petitioner claims that he deposited Rs.4,42,380/- towards registration fee and stamp duty and thereupon, the lease deed in Form-G-1 was executed by the State in his favour on 04.06.2011.

While so, the Assistant Director of Mines and Geology, Visakhapatnam, addressed letter dated 17.11.2011 to the petitioner asking him to stop quarrying operations with immediate effect. This letter reflects that the reason for such stoppage was that the District Collector, Visakhapatnam, had directed that the sand auctions conducted in respect of Tamarabba and Chintalapudi Villages be kept

in abeyance with immediate effect. The petitioner was therefore prevented from continuing with his quarrying operations from 17.11.2011 to 31.03.2012, upon which date the lease period expired so far as the first year was concerned. As he had deposited the entire amount due up to that date, the petitioner claimed that he was entitled to proportionate refund of the amounts paid by him as he was denied the benefit of the lease through no fault of his.

The Assistant Director of Mines and Geology, Visakhapatnam, filed a counter confirming the factual position as stated above. He stated that the petitioner had been issued dispatch permits for 34,200 cubic metres between 04.06.2011 and 20.09.2011. He however alleged that the petitioner had conducted quarrying operations beyond the leased area to the extent of 400 cubic metres of sand and the same along with a motor boat were seized and handed over to the Village Revenue Officer, Tamarabba. He further stated that a notice had been issued to the petitioner in this regard and an explanation was called for. According to him, the petitioner's reply was found to be unsatisfactory and a demand notice was issued to him directing him to pay normal seigniorage fee of Rs.16,000/- along with ten times penalty of Rs.1,60,000/-, totaling Rs.1,76,000/-. He further stated that the petitioner had not paid the said amount till the date of filing of the counter. He stated that the petitioner was not entitled to any refund as he had violated the lease conditions and the Andhra Pradesh Minor Mineral Concession Rules, 1966, by carrying on quarrying operations outside the leased area.

Perusal of the letter dated 17.11.2011 addressed by the Assistant Director of Mines and Geology, Visakhapatnam, to the petitioner reflects that a mention was made therein of the alleged illegal quarrying by the petitioner. However, at that stage, the explanation of the petitioner was stated to have been received and no final order had been passed.

It is therefore clear that the letter dated 15.11.2011 of the District

Collector, Visakhapatnam, was the only foundation for stoppage of the quarrying operations. A copy of this letter was filed by the petitioner and it demonstrates that the reason for stoppage of the quarrying operations was altogether different. Therein, the District Collector, Visakhapatnam, stated that the Deputy Director of Mines and Geology, Visakhapatnam, had fixed low bid amounts when there was a demand and the rates knocked down were very high. A report was therefore sent to the Director of Mines and Geology, Andhra Pradesh, Hyderabad, by the Collector, Visakhapatnam, to initiate disciplinary action against the erring officers involved. The action of the Deputy Director of Mines and Geology in confirming the bid amounts in the sand auctions, which was in excess of his competence, was stated to be void. As the matter was under enquiry, the District Collector ordered for keeping the sand auctions conducted by the Deputy Director of Mines and Geology, Visakhapatnam, in Tamarabba and Chintalapudi in Devepalli Mandal and Panduru Village in Kotauratla Mandal in abeyance with immediate effect.

However, nothing was stated in the counter which was filed in September, 2012, as to what happened to the enquiry mentioned by the District Collector in his letter dated 15.11.2011. Further, the details set out in the counter reflect that the quarry lease was granted to the petitioner after following the due procedure. There is no indication in the counter that the confirmation of the petitioner's bid was invalid on the ground of competence. The confirmation of the petitioner's bid was, in fact, done by the Zonal Joint Director of Mines and Geology, Visakhapatnam, under proceedings dated 28.05.2011 and not by the Deputy Director of Mines and Geology, Visakhapatnam.

The learned Assistant Government Pleader for Mines and Geology is also unable to shed any light as to whether any action was taken thereafter in this so called enquiry which was initiated and whether any disciplinary proceedings were initiated against the officials who were found to have erred in discharge of their functions,

as mentioned by the District Collector, Visakhapatnam, in his letter dated 15.11.2011. In effect, except for keeping the quarrying operations in abeyance despite executing lawful and valid lease deeds, nothing seems to have been done.

As regards the issue of the petitioner having committed illegal quarrying operations, the letter dated 17.11.2011 of the Assistant Director of Mines and Geology clearly manifests that stoppage of the petitioner's quarrying operations was not traceable thereto. At that point of time, the petitioner's explanation was still under consideration. However, in his counter-affidavit, the Assistant Director asserted that the petitioner was not entitled to refund of the amounts claimed by him as he had committed breach of the rules as well as the lease conditions. Except for this bald recital, there is no indication as to how the petitioner was disentitled from claiming a refund if he was unlawfully prevented from undertaking quarrying operations. The learned Assistant Government Pleader is unable to cite any lease condition or rule which disentitled the petitioner from seeking such relief on the ground that he had conducted illegal quarrying operations. In any event, the petitioner was independently punished for the alleged illegal quarrying operations by holding him liable to pay normal seigniorage fee along with ten times penalty.

Smt. N. Shoba, learned counsel for the petitioner, would contend that the petitioner had submitted his explanation to the show-cause notice issued in this regard but was never communicated the final result or the demand notice said to have been issued calling upon him to pay Rs.1,76,000/- towards seigniorage fee and penalty. She, however, fairly concedes that the said issue cannot be examined in this writ petition which only centers upon the claim of the petitioner for proportionate refund of the amounts on the ground of wrongful deprivation of his leasehold rights. This Court is of the opinion that the two issues are unconnected and the petitioner's claim for proportionate refund is wholly distinct and separate from the issue of the alleged

illegal quarrying said to have been done by him.

The aforestated facts demonstrate that the petitioner, having gone through the due process, was awarded leasehold rights for quarrying sand from 04.06.2011 to 31.03.2012 and he made substantial payments therefor. However, under the letter dated 17.11.2011, the Assistant Director of Mines and Geology, Visakhapatnam, ordered him to stop further quarrying operations and this situation continued till the expiry of the first year lease on 31.03.2012. This stoppage of quarrying operations was solely attributable to the authorities and had nothing to do with the issue of his alleged illegal quarrying. Having deprived the petitioner of the benefit of his quarrying lease for this period, it is not open to the State to wash its hands off the affair and claim immunity.

The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. It provides the theoretical foundation for the law governing restitution. [**RENUSAGAR POWER COMPANY LIMITED V/s. GENERAL ELECTRIC COMPANY**^[1]].

The principle of unjust enrichment finds recognition in Sections 70 and 72 of the Indian Contract Act, 1872. Section 70 reads as under:

‘70. Obligation of person enjoying benefit of non-gratuitous act.
—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

In the present case, the petitioner parted with his monies only on the assurance that he would be given the benefit of the quarrying lease at least till the expiry of the first year on 31.03.2012 i.e. that he would be permitted to quarry and sell the sand up to that date. However, because of the unilateral action of the District Collector, Visakhapatnam, his lease was kept in abeyance and he was prevented from carrying on quarrying operations from 17.11.2011 to

31.03.2012. He did not make payments gratuitously to the State but having appropriated the amounts paid by him, the State denied him the benefit of the lease granted to him in return therefor and is therefore bound in law to compensate him for the same. However, the compensation contemplated is not by way of damages but by way of restitution.

While so, the learned Assistant Government Pleader would contend that such relief cannot be claimed by the petitioner in a writ petition. However, this Court is unable to agree.

Public law field, since its emergence, is ever expanding in its operational dimensions. Its expanse covers even contractual matters. (**COMMON CAUSE, A REGISTERED SOCIETY V/s. UNION OF INDIA**^[2]).

As pointed out in **KUMARI SHRILEKHA VIDYARTHI V/s. STATE OF U.P.**^[3], bringing State activity in contractual matters within the purview of judicial review was inevitable and was a logical corollary to the stage already reached by the Supreme Court in its earlier decisions.

Any civilised society always provides for remedies for cases of what has been called unjust enrichment or undue benefit derived from another which it is against conscience that he should keep. (**FIBROSA SPOLKA AKCYJNA V/s. FAIRBAIRN LAWSON COMBE BARBOUR, LTD.**^[4])

It would therefore not be permissible to the State to grasp at these technical straws to ward off its liability to the petitioner as regards the just restitution to which he is entitled. As the State lays claim to a sum of Rs.1,76,000/-, which is allegedly due from the petitioner under the demand notice issued to him for the alleged illegal quarrying operations done by him, the State would at best be entitled to retain the said amount and no more.

The writ petition is therefore allowed. The respondent authorities

shall work out the proportionate amount due and payable by the petitioner for the period 04.06.2011 to 17.11.2011 and retain the same. In addition thereto, a sum of Rs.1,76,000/- may also be retained, being the amount allegedly due from the petitioner under the demand notice said to have been issued to him. The balance amount paid by the petitioner towards the first year lease along with the security deposit amount paid by him shall thereafter be refunded to him. As the petitioner has not claimed any interest on the sum so payable, this Court does not propose to grant any interest. The amount found to be payable upon the aforestated exercise shall be remitted to the petitioner within four weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

Before parting with the case, it may be noticed that this writ petition was instituted against the Government of Andhra Pradesh. However, the Government of Andhra Pradesh is not *sui juris*. Under Article 300 of the Constitution and Section 79 CPC, the State has to be sued in its own name. However, as this writ petition has been pending consideration before this Court for over three years, the writ petition is not liable to be dismissed on this technical ground. The Registry is however directed to substitute 'State of Andhra Pradesh' in the place of 'Government of Andhra Pradesh' in the description of the first respondent in the cause title before issuing a copy of this final order.

No order as to costs.

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SANJAY KUMAR, J.

2nd JULY, 2015

Note: Issue CC in one week.

B/o PGS

- [\[1\]](#) 1994 Supp (1) SCC 644
- [\[2\]](#) (1999) 6 SCC 667
- [\[3\]](#) (1991) 1 SCC 212
- [\[4\]](#) 1942 (2) All England Reports 122