

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.22857 of 2015

ORDER:

In the present writ petition challenge is to the action of the respondents in not issuing the dispatch permits for transportation of miner mineral namely Quartz and Feldspar.

Heard Smt. N. Shobha, learned counsel for the petitioner and learned Government Pleader for Mines and Geology.

By way of an order vide G.O.Ms.No.31 Industries and Commerce (M-III) Department, dated 14-02-2005, the State Government granted quarry lease in favour of the petitioner herein for Quartz and Feldspar mineral in respect of the area, admeasuring Ac.19-00 gts., in Sy.No.389/1 of Ramanthapur village, Yeldurthy mandal, Medak District for the un-expired portion of the lease period i.e., upto 15-03-2013. The petitioner herein submitted an application on 24-09-2012 to the State Government for grant of renewal with delay. The State Government by way of an order, dated 18-11-2013 condoned the delay in filing the renewal application and the said application for grant of renewal is pending consideration as on date.

The Deputy Director of Mines and Geology, Nizamabad by way of demand notice bearing No.1634/ML/MDK/2013, dated 30-05-2014 requested the petitioner herein to pay a sum of Rs.23,76,211.16 Paisa and Rs.18475829/- towards royalty and sale price of the mineral as per Sub-section (5) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the Act') for alleged violation of Section 4 of the Act.

Felt aggrieved by the said demand notice the petitioner herein filed a revision under Rule 54 of the Mineral Concession Rules, 1960 before the Union of India. The Central Government by way of Final order bearing No.211/2015, dated 17-06-2015 remanded the matter back to the State Government with a direction to conduct fresh enquiry, in accordance with the guidelines as mentioned in 7.3 therein and the said issue is pending consideration.

The grievance of the petitioner in the present writ petition is that though the petitioner is entitled for grant of dispatch permits for transportation of mineral,

the respondent authorities are not issuing permits and according to the learned counsel for the petitioner the same is in violation of Rule 13 (2) and 20 of A.P. Minor Mineral Concession Rules, 1966 (for short, 'the Rules')

On the contrary, it is vehemently contended by the learned Government Pleader that there is no illegality nor there is any infirmity in the impugned action, as such the petitioner herein is not entitled for any relief under Article 226 of the Constitution of India. It is further stated that enquiry with regard to the liability of the petitioner pursuant to the demand notice, dated 30-05-2014 is still pending consideration before the authorities.

In order to resolve the issue in the present writ petition it may be apt and appropriate to refer the provisions of A.P. Minor Mineral Concession Rules, 1966.

Rule 13 (2) of the Rules deals with 'renewal of application', which reads as under:

"13. Disposal of applications:—

(2) The application for the renewal of a quarry lease the application for the renewal of a quarry lease shall be accompanied by a Treasury or Bank challan for rupees one thousand in token of remittance towards fee and shall be made at least ninety days before the expiry of the period of lease to the Deputy Director and it shall be disposed of before the expiry of the lease period. >Provided that where the renewal of quarry lease application is filed within the stipulated time and not disposed off before the expiry of the lease, the period of quarry lease shall be deemed to have been extended till the renewal application is disposed of by the Deputy Director > provided further that where an application for the grant of quarry lease is rejected or deemed to have been refused under these rules, the fee paid by the applicant under sub-rule (1) of Rule 12 shall be refunded to the applicant > Provided also that where an application for grant of quarry lease is rejected on account of any lapse on the part of the applicant in supplying any material information, the fee paid by the applicant under sub-rule (1) of Rule 12 shall be forfeited to the Government."

Rule 20 of the Rules deals with 'Rights under a lease', which reads as under:

"20. Rights under a Lease:— Subject to a contract to the contrary, a quarry lease granted under the rules shall confer on the lessee, the right to quarry, carry away, sell or dispose of the minor mineral or minerals specified in the lease deed and found upon under the lands specified therein."

It is evident from the above that as per the provisions of Rule 13 (2) of the Rules, lessee is entitled to carry on the operation during the pendency of the renewal application.

In the instant case there is absolutely no dispute with regard to the fact that

renewal application filed by the petitioner herein is pending consideration before the respondent authorities after condonation of delay, therefore, the petitioner is entitled to continue the quarry operations as per law.

As per Rule 20 of the Rules the quarry lease confers on the lessee, the right to quarry, carry away, sell or dispose of the minor mineral or minerals specified in the lease deed and found upon under the lands specified therein.

The demand raised earlier by the Deputy Director of Mines and Geology by way of demand notice, dated 30-05-2014 cannot be the ground to refuse to issue dispatch permits in view of the remand ordered by the Union of India vide Final order No.211/2015, dated 17-06-2015 and in view of the absence of any order so far after such demand. In the considered opinion of this Court there is absolutely no justification on the part of the respondent authorities in refusing to issue dispatch permits in favour of the petitioner herein.

For the aforesaid reasons and having regard to the provisions of law mentioned supra, the writ petition is allowed, directing the 4th respondent – the Assistant Director of Mines and Geology, Medak District to issue dispatch permits to the petitioner herein for transportation of mineral namely Quartz and Feldspar in favour of the petitioner herein in respect of land admeasuring Ac.19-00 gts., in Sy.No.389/1 of Ramanthapur village, Yeldurthy mandal, Medak District. However, this order will not preclude the respondent authorities from passing orders either on the renewal application or pursuant to the remand order issued by the Central Government on 17-06-2015. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

August 10, 2015

Note: Furnish C.C. in

four (4) days. B/o.Pn

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