

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

+ WRIT PETITION No.6199 OF 2012

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% DATED 08th OCTOBER, 2015

Between:

NCL Industries Limited, Hyderabad ...Petitioner

and

\$ The Assistant Director of Mines and Geology,

Nalgonda-II, Miryalaguda, Nalgonda District,

and others ... Respondents

<Gist:

>Head Note:

! Counsel for Appellant : Sri C.R.Sridharan,

learned Senior Counsel

^Counsel for respondents : Sri Harish,

Assistant Govt. Pleader for Mines and
Geology

? CASES REFERRED:

1. 2004 (1) ALD 265
2. AIR 2004 SC 2915

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

WRIT PETITION No.6199 OF 2012

Between:

NCL Industries Limited,
Hyderabad. .. Petitioner

and

The Assistant Director of Mines and Geology,
Nalgonda-II, Miryalaguda, Nalgonda District,
and others. .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 08TH OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON’BLE SRI JUSTICE SANJAY KUMAR

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. Whether copies of the judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.6199 OF 2012

ORDER

The petitioner company seeks a writ of certiorari to quash the order dated 31.01.2012 passed by the Deputy Secretary, Ministry of Mines, Government of India, in its Revision No.02/18/2009-RC-II and consequently, to allow the said Revision.

This Court granted interim suspension of the impugned order on 07.03.2012, subject to the petitioner company depositing a sum of Rs.2,00,000/-. This order was passed relying on ***DECCAN LIME STONE MINING COMPANY (P) LTD. V/s. ASSISTANT DIRECTOR OF MINES AND GEOLOGY***, relating to drawing of samples of the mineral for the purpose of determining royalty, and the earlier deposit of Rs.5,00,000/- made by the petitioner company in response to the demand for payment of Rs.19,71,810/-.

The petitioner company was granted a mining lease for limestone over an extent of 45.356 hectares in Sy.No.88 of Mattapally Village and Mandal, Nalgonda District. However, the petitioner company not only mined limestone but also utilized the clay/soil excavated from the leased site in the manufacture of cement. The mining authorities quantified the clay/soil used by the petitioner company in this regard at 18,090 metric tons, which attracted seigniorage fee, and issued notice dated 08.07.2008 to the petitioner company calling upon it to submit an explanation in this regard. By reply dated 23.08.2008, the petitioner company stated that it did not have a separate quarry for soil and that unknowingly the clay/soil was used in the manufacture of clinker for which it had not paid royalty. The petitioner company admitted its liability to pay royalty on the clay/soil as per the Mineral Concession Rules, 1960 (for brevity, 'the Rules of 1960') and expressed its readiness to pay the same. However, by demand notice dated 10.09.2009, the Assistant Director of Mines and Geology, Miryalaguda, directed the petitioner company to pay a sum of Rs.1,97,181/- towards royalty in respect of the 18,090 metric tons of clay / soil used by the petitioner company during the year 2005-06 along with Rs.19,71,810/- towards the cost of the mineral. In all, the petitioner company was therefore required to pay Rs.21,68,991/-.

The petitioner company paid the royalty of Rs.1,97,181/- but out of Rs.19,71,810/- quantified as the cost of the mineral, the petitioner company altogether paid a sum of Rs.7,00,000/- till date.

Aggrieved by the demand notice dated 10.09.2009, the petitioner company filed Revision Application No.02/18/2009-RC-II before the Government of India under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (for brevity, 'the Act of 1957') read with Rule 55 of the Rules of 1960. By the order dated 31.01.2012, the Government of India dismissed the Revision.

Sri C.R.Sridharan, learned senior counsel appearing for the petitioner company, contended that Rule 26 of the A.P.Minor Mineral Concession Rules, 1966 (for brevity, 'the Rules of 1966') would have no application to the case and that Rule 28 of the said rules, relating to discovery of a new mineral, would have application.

Rule 26 of the Rules of 1966 deals with penalty for unauthorized quarrying. Rule 26(1) states to the effect that any person carrying on quarrying operations or transporting minor minerals in contravention of the rules would be liable to pay as penalty such enhanced seigniorage fee, together with assessments, as may be imposed. Rule 26(2) Proviso states that the penalty in this regard shall not exceed ten times the normal seigniorage fee. Rule 28 of the Rules of 1966 states to the effect that if any minor mineral, not specified in the lease, is discovered in the area under lease or permit, the lessee shall not win or dispose of such mineral without obtaining permission and without payment of seigniorage fee.

Sri C.R.Sridharan, learned senior counsel, would point out that Rule 28 of the Rules of 1966 does not prescribe any penalty independently and even if Rule 26 of the Rules of 1966 is to be pressed into service, the said provision vested the competent authority with discretion to levy penalty upto ten times the normal seigniorage fee. Learned senior counsel would contend that the competent authority failed to exercise such discretion in the present case and therefore, the demand notice dated 10.09.2009 is liable to be set aside on this short ground. He would further contend that the order passed by the revisionary authority is bereft of reason and is therefore unsustainable.

Perusal of the impugned order dated 31.01.2012 demonstrates that the claim of the petitioner company before the revisionary authority was that it was only liable

to pay royalty of Rs.1,97,181/- upon the clay/soil utilized by it and that the demand for Rs.19,71,810/- was without the authority of law. When the Revision was listed for hearing on its admissibility on 04.11.2011 and again on 24.11.2011, it was contended on behalf of the petitioner company that clay was a part of limestone, but the mining authorities contested this claim by asserting that the clay could be separated and that the State Government had, in fact, granted separate mining leases for clay/soil to others similarly situated, who held principal mining leases for limestone but also excavated clay/soil. When the Revision was again taken up for hearing on 19.01.2012, there was no representation for the petitioner company. On that day, the matter was taken up only for a clarification as to whether a final order could be passed in the Revision. When the mining authorities, being the respondents therein, clarified that this Court, in the earlier round of litigation between the parties, had left it open to the revisionary authority to proceed, the Government of India passed the final order dated 31.01.2012 dismissing the Revision holding that the demand notice issued by the State Government was in order.

The thrust of the arguments advanced by the learned senior counsel appearing for the petitioner company centered on the Rules of 1966, obviously treating clay/soil as a minor mineral. However, the learned Assistant Government Pleader for Mines and Geology objected to the foundational premise of these arguments. He pointed out that the subject clay/soil is not a minor mineral as per the Rules of 1966. He relied upon the definition of 'ordinary sand/clay' in Rule 4(f) of the Rules of 1966, which reads as follows:

'4. Definitions:- In these rules, unless the context otherwise requires:--

(a) to (e)

(f) 'Ordinary sand or clay' means:-

- i. the ordinary sand used for building or other similar purposes, but not used for industrial purposes, such as refractory, ceramic, glass staring and metallurgical industries; and
- ii. the ordinary clay used for small scale manufacture of bricks, tiles, pots and the like but not used for large scale manufacturing purposes, such as, for the manufacture of ceramics or cement.

..."

Learned Assistant Government Pleader pointed out that it was an admitted fact that the clay/sand mined by the petitioner company along with limestone was used for the manufacture of cement and asserted that it therefore stood excluded from 'clay' falling within the ambit of a minor mineral, in the light of Rule 4(f)(2) of the Rules of 1966. Learned Assistant Government Pleader would contend that the clay used for manufacture of cement would therefore be a major mineral and that the Rules of 1966 would have no application thereto. He pointed out that the impugned notice dated 10.09.2009 did not speak of levy of penalty under the Rules of 1966, as understood by the petitioner company, and drew the attention of this Court to the terminology used in the demand notice dated 10.09.2009 which specifically stated that the petitioner company was to pay Rs.19,71,810/- towards the 'cost' of the mineral.

Learned Assistant Government Pleader relied upon Section 21(5) of the Act of 1957 in this regard. This provision states that any person raising, without lawful authority, any mineral from any land would be liable to pay the price thereof to the State Government, apart from rent, royalty or tax. Learned Assistant Government Pleader asserted that this was the basis for requiring the petitioner company to pay cost of the mineral utilized by it without authority of law. He placed reliance on ***KARNATAKA RARE EARTH V/s. SENIOR GEOLOGIST, DEPARTMENT OF MINES AND GEOLOGY***, wherein the Supreme Court, while dealing with Section 21(5) of the Act of 1957, observed as under:

'7. ... The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority.'

As the petitioner company completely misdirected itself in its attack against the demand notice dated 10.09.2009 and the revisionary order dated 31.01.2012 by treating the case as one arising under the Rules of 1966, Sri C.R.Sridharan, learned senior counsel, was asked as to whether any ground had been raised challenging the action taken against the petitioner company under Section 21(5) of the Act of

1957. Learned senior counsel fairly conceded that no grounds have been raised in this regard.

The cited case law, relating to the Rules of 1966, is therefore eschewed from consideration being wholly inapplicable. It is also not demonstrated before this Court as to how the *ratio* in ***DECCAN LIME STONE MINING COMPANY (P) LTD.***¹ is relevant.

This Court finds merit in the contention urged by the learned Assistant Government Pleader that the mining authorities initiated action against the petitioner company treating the clay/soil used by it in the manufacture of cement as a major mineral and that the demand notice issued by them was traceable to Section 21(5) of the Act of 1957 but not Rule 26 of the Rules of 1966. As no ground of attack has been raised by the petitioner company in this regard, the writ petition is devoid of merit and it is accordingly dismissed.

Before parting with the case, this Court must place on record its appreciation of the perseverance and hard work put in by the learned Assistant Government Pleader, Sri Harish, in his endeavour to protect the interests of the State. The pleadings filed by the State, in fact, lacked the thrust and precision of the arguments advanced by him with immense ability and clarity.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

08TH OCTOBER, 2015

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