THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.17433 OF 2012

DATED 16th JUNE, 2015

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Between:

M/s.K.S.Raju Constructions, rep. by its

Partner, Mr. K.Ramesh, s/o Innayya,

aged 36 years, r/o Sarapaka Village,

Bennganpadu Mandal, Khammam District.

.... Petitioner

and

Government of Andhra Pradesh,

rep. by its Principal Secretary,

Industries & Commerce Department,

Secretariat, Hyderabad, and others.

… Respondents

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<u>O R D E R</u>

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The petitioner firm, a first class contractor, assails the seizure of its sand stock by the Assistant Director of Mines and Geology, Kothagudem, Khammam District, under letter No.1257/V&E/2011 dated 08.06.2012.

By order dated 13.06.2012, this Court directed *status quo* as on that date to be maintained. Though the said order expired by efflux of time, it appears that it is still being given effect.

The petitioner firm was awarded certain construction works by M/s. ITC Limited. In execution thereof, the petitioner firm claims to have procured and stocked 3,724 cubic metres of sand in a patta land in Sy.No.8/2 of Sarapaka Village. This sand was stated to have been purchased from one Sondi Ravi Kumar, who held a valid lease for quarrying sand. The purchase of sand was stated to have been effected between July, 2011 and March, 2012. According to the petitioner firm, the sand had already suffered payment of seigniorage fee and was transported under valid waybills. Despite the same, the Assistant Director of Mines and Geology effected its seizure under the impugned letter dated 08.06.2012 on the ground that the petitioner firm did not possess a mineral dealer licence under the Andhra Pradesh Mineral Dealers' Rules, 2000 (for brevity, 'the Rules of 2000'). Aggrieved thereby, the petitioner firm is before this Court.

The Assistant Director of Mines and Geology, Kothagudem, filed a counter-affidavit stating that the petitioner firm could not have stocked sand at any place without having a mineral dealer licence as per the Rules of 2000. He further asserted that the bills produced by the petitioner firm were not in proper form as the destination was not specified therein clearly. He alleged that the sand had been illegally quarried and stocked and the seizure effected by him was therefore valid and justified.

In its reply-affidavit, the petitioner firm asserted that it needed no registration as a mineral dealer under the Rules of 2000 as the same were not applicable to it. It further stated that the waybills produced by it were sufficient proof of payment of seigniorage fee, as held by a Full Bench of this Court in ***L.VENKATESWARA RAO V/s. SINGARENI COLLIERIES LIMITED***, and that the mining authorities had no right over the sand purchased by it from an authorized leaseholder.

Though the mining authorities, in their counter affidavit, sought to justify the seizure effected on various grounds, it is manifest that the seizure under the impugned letter dated 08.06.2012 was effected on the sole ground that the petitioner firm did not have a mineral dealer licence under the Rules of 2000. It is a settled position of law that the impugned proceeding must stand or fall on its own strength and cannot be supported thereafter by way of reasons supplemented through pleadings. [***MOHINDER SINGH GILL V/s. CHIEF ELECTION COMMISSIONER***]. Further, the reasons offered, be it by way of the counter-affidavit or the inspection report filed along with the counter, are wholly irrelevant and, at best, could be categorized as lapses on the part of the leaseholder who issued the waybills. The reasons put forth in this regard are that the destination was not properly mentioned in the waybills which were not in proper form. Thus, the only ground which requires to be considered *vis-à-vis* the impugned seizure is as to the petitioner firm requiring a mineral dealer licence under the Rules of 2000.

'Dealer' is defined under Rule 2(1)(d) of the Rules of 2000 which reads as under:

> '*Dealer*' means any person who carries on the business of buying, selling, supplying, transporting, distributing or delivering for sale of minerals and mineral products and includes.
>
> a. Persons who buy and process mineral or mineral products for sale or for utilization for their own purposes.
>
> b. Any person who holds a mining lease or a quarry lease granted under the Minerals Concession Rules, 1960 or the A.P. Minor Mineral Concession Rules, 1966 issued by the Government, framed under the Mines and Minerals (Development and Regulation) Act, 1957.'

This definition fell for consideration before this Court in ***NOVEL GRANITES LTD. V/s. GOVERNMENT OF ANDHRA PRADESH***. Adverting to Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, under which the Rules of 2000 were framed, and Rule 2(h) of the said Rules, which defines 'Mineral', this Court came to the conclusion that the definition of 'Dealer' in Rule 2(1)(d) of the Rules of 2000 should be read down so as to exclude persons who undertake manufacturing/processing activity using mineral as raw material. This Court however made it clear that the State and its officials, authorized for the purpose, would be free to inspect and check any premises where the mineral is stored before it is processed and exercise the power of seizure of such mineral, if it is found that it had not suffered royalty and/or dead rent.

Smt.N.Shoba, learned counsel for the petitioner firm, would however contend that the petitioner firm does not fall within the definition of a 'Dealer' as per Rule 2(1)(d) and therefore, the Rules of 2000 are wholly inapplicable to it.

This Court is however not persuaded to agree. The definition of 'Dealer' as per Rule 2(1)(d) is an inclusive one and is couched in very wide terms. In common parlance, a 'dealer' would not include a mere user as an element of commercial enterprise is intrinsically linked with the word. However, the inclusive portion of the definition which follows under Clauses (a) and (b) widens its scope. Under Clause (a), any person who buys and processes minerals even for his own utilization would fall within the definition.

Smt.N.Shoba, learned counsel, would however contend that mere use of the sand in construction activity by the petitioner firm would not amount to 'processing' of the mineral. The word 'process' has not been defined in the Rules of 2000 or in the parent Act. This Court would therefore have to fall back on the dictionary meaning of the word. The Oxford Dictionary defines 'process' to mean a course of action or a procedure (esp. a series of changes in manufacture or some other operation); the progress or course of something (in process of construction); the course of becoming, happening etc.; a natural or involuntary operation or series of changes.

The use of sand in construction would inevitably fall within the above definition of 'process' as a change is brought about in the mineral by mixing it with cement and thereafter putting it to use. The petitioner firm would therefore qualify as a person which 'processes' sand for utilization.

That being so, the petitioner firm is a 'dealer' as per Rule 2(1)(d) of the Rules of 2000. However, in the light of the law laid down by this Court in ***NOVEL GRANITES LTD.***[3], this literal interpretation of the definition under Rule 2(1)(d) of the Rules of 2000 has to be read down so as to exclude persons who undertake processing of mineral as a raw material. Given this *ratio*, the petitioner firm would stand excluded and would therefore be exempt from obtaining a mineral dealer licence in terms of the Rules of 2000. *Ergo*, the seizure of the petitioner firm's sand stock on the sole ground that it did not possess such a licence cannot be sustained. However, as pointed out by this Court in ***NOVEL GRANITES LTD.***[3], the petitioner firm would still be accountable to show that the sand stocked by it has suffered payment of seigniorage fee. To that extent, the mining officials would be entitled to enter upon the premises where the sand is stocked for verifying as to whether it has suffered royalty.

Smt. N. Shoba, learned counsel, states that the petitioner firm is in a position to demonstrate that seigniorage fee has been fully paid upon the sand stocked by it.

The writ petition is therefore disposed of permitting the petitioner firm to produce proof of payment of seigniorage fee on the seized sand within one week from the date of receipt of a copy of this order. Upon due verification thereof, the Assistant Director of Mines and Geology, Kothagudem, shall satisfy himself as to whether the seized sand has suffered payment of seigniorage fee and if found to be so, he shall release the seized sand to the petitioner. This exercise shall be completed within one week from the date of receipt of the proof of payment of seigniorage fee from the petitioner. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J.

16th JUNE, 2015.

PGS