

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.35004 OF 2012

DATED:18-6-2015

Between:

Megha Engineering & Infrastructure Limited
Rep. by Authorised Signatory T. Ashok Reddy
General Manager (Legal),
S-2, Technocrat Industrial Estate
Balanagar
Hyderabad

... Petitioner

And

The A.P. State Irrigation Development
Corporation Ltd.,
Rep. by its Vice-Chairman & Managing Director
Road No.13, Banjarahills, Hyderabad
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. K.V. Subba Reddy

COUNSEL FOR THE RESPONDENTS: None appeared

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a Mandamus to set aside Letter No.IDC/EE/GNT/D.B/A.E.1/1086, dt.25.10.2012, in respect of Agreement No.14/2007-2008, dt.14.02.2008, and letter No.IDC/EE/GNT/D.B/A.E.1/ 1085, dt.25.10.2012, in respect of Agreement No.15/2007-2008, dt.14.2.2008.

At the hearing, there is no representation for the respondents.

I have heard the learned counsel for the petitioner and perused the record.

The petitioner has entered into the above mentioned two agreements with respondent Nos.1 and 2 for construction and commissioning of ANUPU L.I. Scheme and Koppunuru L.I. Scheme, on foreshore of N.S.P. Reservoir, Macherla Mandal of Guntur District, including operation of the Schemes for one year on turn key basis. The work involves excavation of soil, laying pipes and lastly refilling the pipeline with the excavated earth, which is ordinarily known as 'ordinary earth'. By the impugned letters, respondent No.2 has demanded recovery of seigniorage charges on the ordinary earth excavated during the work and utilized for refilling.

Mr. K.V. Subba Reddy, learned counsel for the petitioner, placed before this Court the judgment of this Court in *Indian Hume Pipe Co. Ltd. Mumbai v. State of Andhra Pradesh*^[1] wherein this Court, while dealing with a similar issue *inter alia*, held as under:

"16. The activity of mining has its own specific attributes. Its principal objective is to extract mineral and utilize it for commercial purposes. Since the Government holds the sovereign rights over the minerals, that are impregnate in the earth, it is only on being permitted by it, that the activity of mining can take place.

17. *It is not even alleged that any of the petitioners have taken up mining as their principal activity. It is in the course of their civil works, that the trenches are dug. This naturally lead to the accumulation of the resultant gravel or earth by the side of the trench. Since the digging of the trench is for the purpose of civil work, it cannot be treated as mining activity at all. Added to that, the digging was not undertaken with an objective of recovering gravel or any other specified material. On the other hand, the gravel or earth came to be removed in the course of digging the trench. Even if stone comes in the trench, that has to be blasted or cut. On that account, the concerned individual or the agency cannot be said to have undertaken mining activity.*

18. *Another way of looking at the issue is, as to whether the petitioners have supplied or sold the mineral or earth recovered in the process of digging the foundations. If they sold the soil or gravel, which they excavated, without obtaining lease or used it for a different work, the respondents shall be entitled to levy seigniorage fee. That is not even the allegation. A totally higher-technical approach is adopted. Mathematical calculation of what would have been the earth excavated in the course of digging the trench, what would be the quantity of earth that is needed to level the trench, after the completion of the work, and what would remain thereafter, is done and on the last of the quantities, the seigniorage fee is sought to be levied. The whole approach of the respondents is untenable."*

As the facts of the present case are similar to that in the case dealt with in the above quoted judgment, the ratio laid down therein applies in all fours to this case.

The writ petition is accordingly allowed in terms of the said judgment.

As a sequel to disposal of the writ petition, W.P.M.P. No.44481 of 2012 and W.P.M.P. No.2555 of 2013 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

18-6-2015

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[\[1\]](#) 2013(4) ALD 490