

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

WRIT PETITION NO.23408 OF 2012

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Between:

M/s S.K. Sarawagi & Co. (Pvt.) Ltd. .. Petitioner

and

Government of Andhra Pradesh rep. by
Principal Secretary to Government,
Industries & Commerce (M.III) Department
and others .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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.23408 OF 2012

ORDER

The petitioner company approached this Court aggrieved by the demand notice dated 21.07.2012 issued by the Deputy Director of Mines and Geology, Visakhapatnam, whereby it was called upon to pay Rs.54,36,704/- on the ground that it operated the mine outside the leased area and excavated 2,912 metric tonnes of manganese.

By order dated 06.08.2012, this Court granted interim stay of the impugned demand notice.

A mining lease for manganese ore was granted by the State to one M/s. S.C.Bhadra & Sons over an extent of 14.973 hectares in Chinnaraviyam Village,

Merakamudidam Mandal, Vizianagaram District, for a period of 20 years. This lease expired in the year 1981. During the pendency of the lease, the petitioner company purchased an extent of 4.055 hectares out of the leased area from M/S. S.C.Bhadra & Sons under registered sale deed dated 01.12.1975 and applied for a mining lease in respect thereof. Under G.O.Ms.No.271, Industries & Commerce (M-III) Department, dated 28.09.2006, the petitioner company was granted a mining lease for manganese over this extent of 4.055 hectares in Sy.Nos.5(P), 6/1, 6/2, 6/3P, 6/5, 6/6, 6/7, 6/9 and 10/2 of Chinnaraviyam Village for a period of 20 years. A mining lease agreement was executed between the State and the petitioner company on 24.03.2007.

While so, the Deputy Director of Mines and Geology, Visakhapatnam, the third respondent, issued show-cause notice dated 12.09.2011 to the petitioner company stating that the Assistant Director of Mines and Geology, Vizianagaram, the fourth respondent, had reported that the petitioner company had worked some area outside the leased area, that the approximate weight of manganese excavated outside the leased area was 2,912 metric tonnes and called upon the petitioner company to show-cause as to why action should not be initiated against it. In its reply dated 27.09.2011, the petitioner company asserted that it had not encroached beyond the leased area and that it had not excavated any manganese ore on the southern side. The petitioner company also filed a copy of the report of the Geological Survey of India to show that the ore on the south-east side was removed by M/s. S.C. Bhadra & Sons. The petitioner company prayed for revocation of the show-cause notice. Despite this explanation, the third respondent issued the demand notice dated 21.07.2012 calling upon the petitioner company to deposit the sum of Rs.54,36,704/- towards the illegally excavated manganese ore, quantified at 2,912 metric tonnes.

Sri D. Prakash Reddy, learned senior counsel appearing for the petitioner company, stated that after filing of the writ petition, the petitioner company came to know that the Deputy Director of Mines and Geology, Visakhapatnam, had himself undertaken an inspection and submitted a report to the Director of Mines and Geology, Hyderabad, under letter dated 14.05.2012. Learned senior counsel stated that the contents of this letter cast new light upon the issue.

A copy of the said letter was filed by the petitioner company under an additional affidavit. Perusal thereof reflects that the Director of Mines and Geology,

Hyderabad, under letter dated 10.08.2011 had requested the Deputy Director of Mines and Geology, Visakhapatnam, to inspect the area personally along with the Assistant Director of Mines and Geology, Vizianagaram, and furnish a detailed report in the matter after examining the reply and the supporting documents filed by the petitioner company. The Deputy Director of Mines and Geology, Visakhapatnam, stated that he had inspected the mining lease area of the petitioner company, accompanied by the Assistant Director of Mines and Geology, Vizianagaram, in the presence of the Additional Director of the petitioner company on 09.05.2012 and stated that on local enquiry, it was revealed that previously in this area manganese ore had been quarried by the previous lease holder, M/s. S.C. Bhadra, and this was also noted by the GSI to the effect that 3,100 tonnes of ore was taken out from the quarry by M/s. S.C. Bhadra. He further noted that at present, this old pit was partly covered by over bidden material and the quantity excavated by M/s. S.C. Bhadra was 3,100 tonnes which was higher than the quantity of 2,912 tonnes assessed by the Assistant Director of Mines and Geology, Vizianagaram. The Deputy Director of Mines and Geology therefore asked for necessary instructions to take further action in the matter.

The counter-affidavit filed by the Deputy Director of Mines and Geology, Visakhapatnam, attempted to justify issuance of the demand notice to the petitioner company alleging that it was responsible for the illegal excavation of the ore. In so far as the letter dated 14.05.2012 is concerned, the Deputy Director stated that it did not pertain to the illegal excavation but pertained to different survey numbers. However, such was not the import of the letter dated 14.05.2012 which clearly reads to the effect that the Deputy Director of Mines and Geology, Visakhapatnam, having undertaken a personal inspection of the site, found that the excavated ore from the old pit was attributable to the erstwhile lease holder, M/s. S.C. Bhadra & Sons, as confirmed by the report of the Geological Survey of India. The Deputy Director of Mines and Geology was therefore asked to file an additional affidavit to explain this contradiction in his stance.

Thereupon, the Deputy Director of Mines and Geology, Visakhapatnam, filed an additional counter-affidavit in September, 2015, wherein he stated that the petitioner company purchased the extent of Ac.10.16 cents in Sy.Nos.6/1, 6/3, 9/P, 10/P and 25/2 of Chinnaraviyam Village, Merakamudidam Mandal, Vizianagaram District, from M/s. S.C. Bhadra & Sons, but it failed to furnish the details of the survey

numbers in which M/s. S.C. Bhadra & Sons had a mining lease. The details of these survey numbers were stated to be essential to ascertain whether the area where the illegal extraction of manganese ore was undertaken was the same or not. He further stated that the pit measurements furnished in the GSI report had to be verified once again in the field on the basis of the records. Referring to the letter dated 14.05.2012, the Deputy Director conceded that local enquiries had revealed that previously in this area manganese ore had been quarried by the erstwhile lease holder, M/s. S.C. Bhadra & Sons, and as noticed by GSI, 3,100 tonnes of ore was taken out from the quarry by M/s. S.C. Bhadra & Sons, which was higher than the quantity of 2,912 metric tonnes assessed by the fourth respondent. The Deputy Director stated that as the Director of Mines and Geology, under Memo dated 27.06.2012, had directed his office to follow the procedure and take further necessary action, the demand notice dated 21.07.2012 had been issued.

As the Deputy Director stated that the demand notice was ultimately attributable to the Director's Memo dated 27.06.2012 and as the impugned demand notice also recorded that it had been issued upon the instructions of the Director of Mines and Geology under the Memo dated 27.6.2012, the learned Assistant Government Pleader was asked to produce a copy of the said Memo. The same was accordingly placed on record. Perusal thereof reflects that the Director of Mines and Geology, Andhra Pradesh, while referring to the letter dated 14.05.2012 addressed to him by the Deputy Director of Mines and Geology, Visakhapatnam, asking for further instructions, stated that as per the provisions, any violations by a mining lease holder required the Assistant Director of Mines and Geology concerned to submit proposals to the Deputy Director of Mines and Geology who was required to duly examine the matter and thereafter issue a show-cause notice to the lease holder either for rectification of any breaches or for any action for extraction of mineral outside the mining lease area. The Director found fault with the Deputy Director in seeking instructions from his office without following the established procedure and accordingly directed the Deputy Director of Mines and Geology, Visakhapatnam, to follow the procedure and take further necessary action accordingly.

In the light of the Memo dated 27.06.2012, the Deputy Director necessarily had to take into consideration his own findings during the personal inspection undertaken by him and then take appropriate action. The counter-affidavits filed by

the Deputy Director clearly demonstrate that he did not even arrive at a final decision, as even according to him, necessary particulars relating to the lease of M/s. S.C. Bhadra & Sons were not available with him and according to him, the GSI report warranted further verification on the basis of records. Surprisingly, the Deputy Director put it upon the petitioner company to produce the details of the mining lease of M/s. S.C. Bhadra & Sons. Merely because the petitioner company purchased a part of M/s. S.C. Bhadra & Sons' mining lease area under a sale deed, it would not be privy to the mining lease records of M/s. S.C. Bhadra & Sons, whereby it could have produced such mining lease particulars. On the other hand, being the custodian of the mining lease records, it was for the Deputy Director of Mines and Geology, Visakhapatnam, to examine the material available with his own office to ascertain the details of such mining lease. Without doing so and without reference to the GSI report, the Deputy Director of Mines and Geology, Visakhapatnam, seems to have blindly issued the demand notice without even coming to a conclusion as to whether the petitioner company was actually liable to be penalized for illegal excavation of the ore, if any. On the other hand, the clinching findings recorded by the Deputy Director of Mines and Geology, Visakhapatnam, in the letter dated 14.05.2012, clearly indicated that the petitioner company was not responsible for the illegally excavated manganese ore. Completely ignoring his own findings, the Deputy Director seems to have issued the impugned demand notice without application of mind though the Memo dated 27.06.2012 of the Director of Mines and Geology, Andhra Pradesh, required him to do so. The impugned demand notice is therefore set aside being wholly unsustainable on facts and in law.

The writ petition is allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

13th OCTOBER, 2015

