

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

W.P.No.20019 of 2003

ORDER:

In the present writ petition, challenge is to the proceedings in Rc.No.2877/2002 dated 01.05.2003 issued by the District Panchayat Officer, Machilipatnam, Krishna District/third respondent herein, communicating the decision of the District Level Committee, Krishna Machilipatnam/second respondent herein, rejecting the request of the petitioner herein.

2. The Convener, District Level Committee and the District Panchayat Officer, Krishna, Machilipatnam issued a notification inviting sealed tenders for sale of lease hold rights of sand in various reaches of Krishna District. In

response to the said auction notice, petitioner herein also submitted his tender and emerged as the highest bidder for Rs.11,50,000/- for Jupudi reach in the auction held on 11.10.2002 as indicated in the auction notice. Therefore, an agreement was also entered in between the petitioner and the District Panchayat Officer on 26.10.2002. The District Panchayat Officer vide proceedings Rc.No.2877/2002, dated 28.10.2002 issued a work order in favour of the petitioner herein. The petitioner herein submitted a representation on 23.01.2003 to the second respondent requesting for information about the non-availability of the sand within the boundaries shown by the department and requested to return the amounts paid. Responding to the said representation, the District Panchayat Officer vide order dated 23.01.2003 requested the Assistant Director of Mines and Geology, Vijayawada and the Mandal Revenue Officer, Ibrahimpatnam to inspect the subject sand reach and to furnish the information on the availability of the sand. In response to the said letter dated 23.01.2003, the Mandal Revenue Officer, Ibrahimpatnam vide letter dated 30.01.2003 informed the District Panchayat Officer about the information with regard to the non-availability of the sand in the subject reach. The Assistant Director of Mines and Geology also addressed a

letter dated 30.08.2003 categorically stating that the material available in the reach is not suitable for construction purpose. Thereafter, the District Panchayat Officer, Krishna, Machilipatnam vide Rc.No.2877/2002 dated 01.05.2003 informed the petitioner that the request of the petitioner was placed before the District Level Committee on 15.04.2003 and that the District Level Committee, turned down the request of the petitioner.

3. In the above background, questioning the action of the respondent authorities in declining to pay the amounts paid by the petitioner, the present writ petition came to be filed.

4. This court issued *Rule Nisi* on 22.09.2003, but so far no counter affidavit has been filed by the respondents, opposing the relief sought in the writ petition.

5. Heard Smt.N.Shoba, learned counsel for the petitioner and the learned Government Pleaders for Mines and Geology and Panchayat Raj, for the respondents.

6. According to the learned counsel for the petitioner, the impugned action on the part of the respondent authorities in refusing to pay the amounts paid by the petitioner is highly illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and opposed to the very spirit and object of the provisions of the A.P. Minor Mineral Concessions Rules, 1966. It is the further submission of the learned counsel for the petitioner that for the fault on the part of the respondents, the petitioner herein cannot be penalized. It is further submitted that since the petitioner herein could not carry on any sand quarry operations because of non-availability of the sand in the leased area, the respondents have no justification to withhold the amounts paid by the petitioner.

6. On the contrary, it is vehemently contended by the learned Government Pleader that there is absolutely no illegality nor there exists any arbitrariness in the action of the respondents, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is the

further emphatic submission of the learned Government Pleader that according to the conditions of the lease the petitioner is not entitled for any relief from this Court as the lessee agreed to bear all the losses also arising out of the lease.

7. The information available before this Court manifestly discloses that the petitioner herein having emerged as the highest bidder in the auction conducted on 11.10.2002, paid the amounts to the respondents herein. It is significant to note that a perusal of the agreement dated 26.10.2002, which is placed on record as material paper along with the writ petition and the schedule appended to the said agreement is totally silent with regard to the boundaries except indicating the location as within the jurisdiction of Jupidi Grampanchayat. There is also no dispute on the reality that responding to the representation made by the petitioner on 23.01.2003 for refund of the amount, the District Panchayat Officer called for the report from the Assistant Director of Mines and Geology and the Tahsildar, Ibrahimpatnam, who by virtue of letters dated 30.01.2003 and 30.08.2003 categorically informed the District Panchayat Officer with regard to the information about the non-availability of the sand in the subject area. There is absolutely no dispute with regard to the reality that the petitioner herein, pursuant to the lease agreement could not carry on the sand quarry operations in view of the non-availability of the sand. Another important aspect is the lease agreement which is placed on record along with the present writ petition as the material paper does not contain any condition which disentitles the petitioner from claiming the refund of the amount. Therefore, this Court does not find any valid reason nor any justification on the part of the respondent authorities in declining to pay the amounts already paid by the petitioner. In the considered opinion of this Court, the impugned action on the part of the respondents is highly preposterous, iniquitous and reprehensible and is liable to be deprecated.

8. For the aforesaid reasons, writ petition is allowed declaring the impugned action which culminated in issuance of proceedings in

A.V. SETHA SAI, J

grk

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

—
—
—

-

-

W.P.No.20019 of 2003

Dated 23rd June, 2016

grk