

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

WRIT PETITION No.18495 of 2008

ORDER:

This writ petition filed under Article 226 of the Constitution of India assails the memo bearing No.4657/M.II(1)/2007-1, dated 01-09-2007 issued by the State Government and the consequential orders of the 2nd respondent – the Director of Mines and Geology issued vide Memo bearing No.10421/R5-2/2007, dated 21-09-2007.

Heard, Smt. N. Shoba, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondent Nos.1 to 4, apart from perusing the material available before this Court. None appears for respondent No.5.

According to the pleadings available on record, the petitioner herein submitted an application for grant of quarry lease for road metal and building stone in respect of an extent of Ac.18-50 cents in Sy.No.1053 of Bommavaram village, Obulavaripalli mandal, Kadapa District. Subsequently, the Mandal Revenue Officer, Obulavaripalli issued No Objection Certificate for the applied extent and thereafter the Assistant Director of Mines and Geology inspected the area along with the technical staff on 25-11-2006.

The 5th respondent herein also made an application on 08-11-2006 for an extent of Ac.3-00 in the same area. The 5th respondent herein submitted a representation to the respondent authorities, requesting to grant the lease on preferential basis in its favour while stating they have leases in the adjoining area.

Thereafter the respondent authorities referred the matter to the State Government and the State Government vide memo bearing No.4657/M.II(1)/2007-1, dated 01-09-2007 accorded permission under Rule 12(5)(b) of A.P. Minor Mineral Concession Rules, 1966 (for short, 'the Rules') for overlooking the prior application of the petitioner for a limited portion of Ac.3-00 and considering the later application, dated 08-11-2006 of the un-official respondent herein.

As a sequel to the said permission granted by the State Government the Director of Mines and Geology vide Memo bearing No.10421/R5-2/2007, dated 21-09-2007 requested the Deputy Director of Mines and Geology to take necessary action in the matter. The said memos, dated 01-09-2007 and 21-09-2007 issued by the State Government and the Director of Mines and Geology are under challenge in the present writ petition.

It is contended by learned counsel for the petitioner that the memoranda impugned in the present writ petition are highly illegal, arbitrary and unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India and opposed to the very spirit and object of the Rules. It is further submitted by learned counsel for the petitioner that

Rule 12 (5)(b) of the Rules referred to in the impugned memo has absolutely no relevance to the present case as

Rule 12 (5) of the Rules deals exclusively with the granite mineral and in the instant case the mineral leased is road metal and building stone. It is further contended that without being preceded by any speaking order assigning the reasons for overlooking the earlier application of the petitioner, the State Government granted

approval in an arbitrary and illegal manner. It is further contended that the Rule relevant for the present case is Rule 12 (3) of the Rules and according to the said Rule the Director of Mines and Geology is the competent authority to grant prior approval in the event of overlooking the priority and in the instant case no such orders have been passed by the Director of Mines and Geology. It is further submitted that the orders of the Government are completely bereft of valid reasons.

On the contrary, it is submitted vehemently by learned Government Pleader for Mines and Geology that there is no illegality nor there exists any procedural infirmity in the impugned action and keeping in view the security of the Labour Government granted permission in favour of the 5th respondent herein.

The material available before this Court clearly discloses that the petitioner herein submitted its application for grant of quarry lease one day in advance to the 5th respondent i.e., the petitioner submitted its application on 07-11-2006, whereas the 5th respondent submitted its application on 08-11-2006. In order to resolve the present issue it may be appropriate to refer to the relevant provisions under the Rules. As rightly pointed out by the learned counsel for the petitioner Rule 12 (5) of the Rules deals exclusively with the granite material and the relevant Rule for building stone is Rule 12 (3) of the Rules. Rule 12 (3) of the Rules reads as under:

“12. Grant of lease:— (3) The quarry lease applications for minor minerals under 5[items at Sl.No.1 to 3(a)] of Schedule-I to Rule 10 shall be disposed of by the Deputy Director in order specified below:—

- (1) Applications of Societies of Professional/(local) Traditional stone cutters (waddaras).
- (2) Crusher owners who do not have quarries.
- (3) Unemployed youth holding Geology degree, and businessmen who propose to set up crushers.
- (4) Others:

[Provided that the above priorities shall prevail if the subsequent applications are received within 7 (Seven) days of the receipt of the first application, otherwise the applications shall be disposed off in the order of their receipt] .

[Provided [further] that the Deputy Director may with the prior approval of the Government grant a quarry lease overlooking the above priorities for any special reasons to be recorded in writing:

Provided [also] that whenever more than one application falling under category (1) above are received for grant of quarry lease and have to be considered, the Deputy Director shall refer the matter to the Government with his recommendations for a direction:

Provided also that whenever more than one application falling under any of the categories (2) to (4) above are received for grant of quarry lease and have to be considered in the order of preference specified above, such preference shall be given to the applications falling in the same category, according to the date of their receipt and in case of applications of the same category received on the same day, the Deputy Director after taking into consideration the particulars furnished in the applications with the prior approval of the Director, may grant the lease to any deserving applicant. Further, he may with the prior approval of the Director, grant a quarry lease to the applicant whose application was received later in preference to the earlier application for reasons to be recorded in writing.

It is very much evident from a reading of the above provision of law that the competent authority for consideration of the application for quarry lease is the Deputy Director of Mines and Geology and according to the proviso No.2 of the said Rule

the Government is competent to grant approval for grant of quarry lease overlooking the priorities as mentioned in the said Rule.

In the instant case, both the petitioner and the contesting respondent fall under category No.4 and the relevant proviso is proviso No.4 and according to the said proviso the competent authority for granting approval for overlooking the priority in the same category is the Director of Mines and Geology and the competent authority for grant of lease is the Deputy Director of Mines and Geology. In the instant case, the State Government, which has absolutely no role to play with regard to granting approval for overlooking the priorities in the same category granted approval in favour of the 5th respondent under Rule 12 (5) (b) of the Rules.

This in the considered opinion of this Court is totally one without jurisdiction. It is also required to be noted that no order of the Director assigning the reasons for granting approval, overlooking the priority is placed on record by the respondents. In view of the above infirmities, this Court is of the considered opinion that the impugned memoranda issued by the State Government and the Director of Mines and Geology cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, setting aside the memo bearing No.4657/M.II(1)/2007-1, dated 01-09-2007 issued by the State Government and the consequential orders of the 2nd respondent – the Director of Mines and Geology issued vide Memo bearing No.10421/R5-2/2007, dated 21-09-2007.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

June 07, 2016

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

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