

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

W.P.No.8204 of 2009

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, calls in question the final order bearing No.39/2008, dated 12.09.2008, passed by the first respondent/Union of India. By virtue of the said final order, the first respondent/Union of India herein dismissed the revision preferred by the petitioner under Rule 54 of the Mineral Concession Rules, 1960 (hereinafter called 'the Rules').

2. Heard Sri D.Venkat Reddy, learned counsel for the petitioner and the learned Government Pleader for Mines and Geology apart from perusing the material available before the Court.

3. The State Government/second respondent herein granted mining lease in favour of the petitioner herein for extraction of Dolomite and While Shale over an area of 107 acres (43.30 hectares) in Sy.No.328/P of Chandana Village, Yadliki Mandal, Anantapur District by virtue of an order issued vide G.O.Ms.No.76, Industries and Commerce (MIII) Department, dated 22.03.1999. The State Government on the recommendations made by the Director of Mines and Geology, while proposing to cancel the said mining lease, issued a show cause notice vide Memo No.21337/M.III-I/2003-I, dated 22.12.2003. In response to the said show cause notice issued by the second respondent/State Government, the petitioner herein on 18.01.2004 submitted an explanation. Thereafter, by way of an order vide G.O.Ms.No.39, Industries & Commerce (M.III) Department, dated 12.02.2004, the Government of Andhra Pradesh cancelled mining lease granted earlier in favour of the petitioner.

4. Aggrieved by the said order of cancellation, the petitioner herein preferred revision before the first respondent Union of India on 18.05.2004. The Government of India, by way of final order No.39/2008, dated 10.09.2008, dismissed the said statutory revision filed by the petitioner under Rule 54 of the Mineral Concession Rules, 1960.

5. Challenging the validity and the legal sustainability of the said order passed by the Union of India and the order of cancellation passed by the second respondent/State Government vide G.O.Ms.No.39, dated 12.02.2004, the present writ petition came to be instituted.

6. It is contended by the learned counsel for the petitioner that the orders passed by the State Government cancelling the mining lease as confirmed by the first respondent/Union of India in the revision are illegal, arbitrary and violative of Articles 14 and 19 (1) (g) of the Constitution of India and opposed to the very spirit and object of the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 and the Mineral Concession Rules 1960. It is further contended by the learned counsel that the second respondent/State Government though acknowledged the explanation submitted by the petitioner in response to the show-cause notice, did not under take any exercise to consider the contents of the said explanation offered by the petitioner. It is further contended that the impugned action of cancellation is also contrary to Rule 27 of the Rules as the second respondent did not issue any notice asking the petitioner to rectify the defects if any. It is further argued by the learned counsel that the first respondent did neither advert to the contents of the revision nor considered the material available on record from proper perspective.

7. On the contrary, it is strenuously contended by the learned Government Pleader for Mines and Geology appearing for the respondents

that there is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same the orders under challenge are not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that as the petitioner herein admitted certain lapses in his explanation, he cannot question the validity of the impugned orders passed basing on the said admissions.

8. In the above background, now the issues that emerge for consideration of this Court are:

- (1) Whether the order of cancellation passed by the State Government vide G.O.Ms.No.39, dated 12.02.2004, as confirmed in revision by the Union of India by final order bearing No.39/2008, dated 12.09.2008, is in accordance with law? and
- (2) “Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?”

9. The information available before the Court vividly discloses that in the show-cause notice issued by the State Government vide Memo No.21337/M.III-I/2003-I, dated 22.12.2003, the second respondent pointed out the following lapses on the part of the petitioner:

- “(1) The lessee has sold Dolomite and Limestone without valid permit.
- (2) As per Joint Inspection conducted by the Vigilance & Enforcement Department along with the Department Officials, the lessee has not maintained proper accounts and mislead the Government.
- (3) The lessee has not conducted the mining operations systematically as required under Rule 27 (2) of M.C. Rules, 1960.

(4) The lessee failed to establish Weighing Machine at the Mine Site.

(5) The lessee has suppressed his mineral transaction made with M/s JSUL and other firms and submitted false accounts and he evaded Royalty of Rs.17,15,758/- including the cost of minerals Rs.1,50,06,358/- and he tried to cheat the Government by maintaining of fraud accounts.”

10. In fact, the petitioner herein submitted an explanation on 18.01.2004 and paragraph 1 to 5 of the said explanation read as under:

1. I had not sold either Dolomite or Limestone without valid permit. No plant or factory will allow any lorry without valid permit along with way bill. Please enquire it in this regard. This for your kind information only.

2. Due to lack of knowledge, at initial stage, in maintaining mining records, I was unable to do properly. At that time my Mine's Manager, for some days was not there due to illness. Now we are maintaining very well. Please excuse in this regard.

3. Sir, when they inspected my mine, it was just started for mining operations. Sir still we have not removed overburden fully, which has high silica (SiO₂) content. Such low grade Dolomite is not suitable for any factory. If you allow me to show the quality report, I will send it to your good selves. That 3200 Metric tonnes nearly, was rejected by the analysis lab people at Mines Pit's mouth itself. They treated it as overburden. Now, time has come to operate systematically. Even IBM people are also inspected the mine and they satisfied with our mining operations. We will obey the rules & regulations and we will follow rules & regulations. We will not go against any rule. Because they are meant for us to progress & welfare.

4. When the said officials inspected my mine, no one was there to explain that the weighing machine is gone for repair. At that time we were not doing mining work. So kindly consider the matter.

5. Last but not least, I had not suppressed our mineral transactions with any plant and we had not submitted false accounts and we had not evaded mineral Royalty. Generally after paying full amount to mine owners and mineral dealers only, they will give purchase bills. i.e material cost + Govt. Royalty and sales taxes. Initially we will pay part payment for clearing Government mineral Royalty and sales taxes. Then we will lift the material. After paying full amount they will give sale bills to us for clearing sales taxes. Without

sufficient Govt. Royalty and waybill any person will not supply to these limited companies. Without sufficient Government. Royalty and waybill the said factories will not allow them into the plant.

Regarding saletaxes: Our vigilance and Enforcement officials are asking saletaxes on freight charges also. The commercial department officials are also obliging this. The said Vigilance and Enforcement officials are dominating the officials and as well as business people.

When there is a business they will pay taxes and there is no business, due to harassment of the Vigilance and Enforcement officials, who will pay taxes to the Govt. *No taxes*

So you should develop business culture and encourage business people to pay Govt Taxes and Royalties i.e Revenue to Government.

We are neither cheaters nor beggars. Due to your so called officials, all Mine owners of Rayalaseema region losted their business.

So you reduce Govt. Mineral Royalty and reduce your Enforcement power. They feel that they are British and they treated business people as cheaters. Please pursue this matter in a practical way.

Kindly allow me to do mining work and if you permit us to show our bills, we will submit your goodselves also."

11. There is absolutely no dispute with regard to the reality that the State Government acknowledged the said explanation offered by the petitioner on 18.01.2004. A perusal of the order of cancellation issued by the State Government vide G.O.Ms.No.39, dated 12.02.2004, candidly discloses that except stating that the reply was not convincing, the second respondent/ State Government did not undertake any exercise, advertent to the contents of the explanation offered by the petitioner on 18.01.2004. This, in the considered opinion of this Court, cannot be sustained in the eye of law. Having invited the explanation and having acknowledged the same, it would be incumbent on the part of the State Government to consider the contents of the explanation and arrive at the conclusions based on reasons. But, unfortunately the second respondent/State Government did not adhere to the

same and passed an order of cancellation of lease without being supported by any reasons for the conclusions.

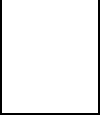
12. The petitioner herein filed a revision against the order of cancellation of mining lease passed by the State Government before the Union of India under Rule 54 of the Rules. Copy of the revision placed on record by the petitioner along with the petition as a material paper in manifest terms reveals that the petitioner herein urged a number of grounds and also brought to the notice of the revisional authority the response given by the Director of Mines and Geology to a press note published on 26.07.2001. Perusal of the order passed by the revisional authority/first respondent herein clearly reveals that the first respondent herein also did take into consideration the explanation offered by the petitioner and obviously without looking into the grounds passed the impugned order, dismissing the revision. This Court, also finds sufficient force in the submission of the learned counsel for the petitioner that the provision of law i.e., Rule 26 (1) as indicated in the show-cause notice has absolutely no relevance to the case on hand and the relevant provision of law is Rule 27 (5) of the Mineral Concession Rules, 1960 which obligates the State Government to issue a notice to the lessee to rectify the breaches if any. In the instant case, the second respondent/State Government did not make any exercise under the said provision of law. This also missed attention of the Union of India/the first respondent revisional authority. It is also to be noted that the revisional authority/first respondent herein asked the petitioner herein to prove certain negative aspects which cannot be sustained in the eye of law. In view of these reasons, this Court has absolutely no scintilla of hesitation to hold that the orders under challenge cannot be sustained in the eye of law.

13. For the aforesaid reasons, the writ petition is allowed, setting aside the order of the first respondent/Union of India passed vide final order bearing No.39/2008, dated 12.09.2008, confirming the order passed by the State Government/second respondent herein vide G.O.Ms.No.39, Industries & Commerce (M.III) Department, dated 12.02.2004 and the matter is remanded to the second respondent/State Government for fresh consideration, after taking into consideration the explanation offered by the petitioner and after giving notice and opportunity of being heard to the petitioner. This exercise shall be completed within three months from the date of receipt of a copy of this order. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No costs.

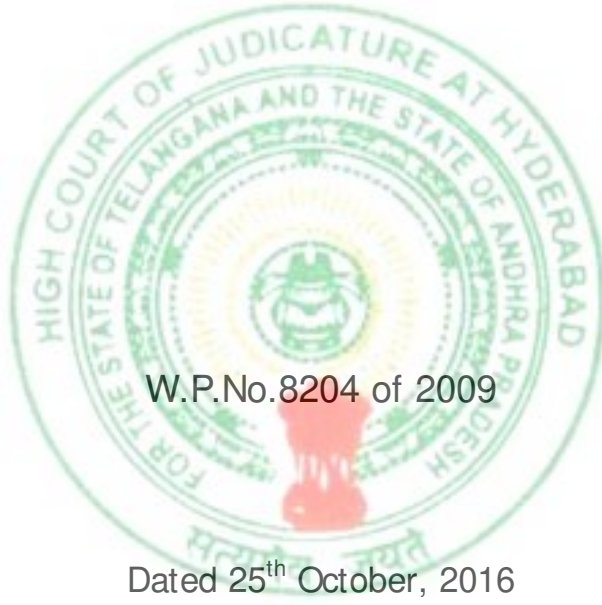
Date:25.10.2016
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A.V.SESHA SAI, J



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



Dated 25th October, 2016