

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

+ WRIT PETITION NO.40621 OF 2015

% DATED 3rd JUNE, 2016

M/s. G.I. Estates rep. by its Proprietrix
R.Kalpana Kiran ...Petitioner

Vs.

\$ The State of Andhra Pradesh rep. by its
Principal Secretary, Industries and
Commerce Department and others ... Respondents

<Gist:

>Head Note:

! Counsel for Petitioner : Sri P.Roy Reddy

^Counsel for the Respondents : Government Pleader for Mines
and Geology (AP)

? CASES REFERRED:

1. (2000) 7 SCC 425

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.40621 OF 2015

ORDER

The petitioner assails the dismissal of its revision under Memo dated 02.12.2015, whereby the Government of Andhra Pradesh confirmed the Demand Notice dated 06.07.2015 issued by the Assistant Director of Mines and Geology, Guntur, calling upon it to pay Rs.5,19,520/- towards seigniorage fee and Rs.51,95,200/- towards penalty, aggregating to Rs.57,14,720/-.

The petitioner was granted, by way of transfer, an existing quarry lease for black granite over an extent of 1,000 hectares in Sy.No.160/1 of Gollapalem Village, Phirangipuram Mandal, Guntur District, under proceedings dated 12.06.2008 of the Director of Mines and Geology, Andhra Pradesh. This lease was originally granted to M/s. Amman Granites but upon its request it was transferred to the petitioner. A fresh lease deed was then executed on 29.07.2008. This transferred lease is valid for the unexpired period of the initial lease, i.e., upto 14.05.2024.

While so, Show-cause Notice dated 15.06.2015 was issued to the petitioner by the Assistant Director of Mines and Geology, Guntur, adverting to the inspection said to have been made of the leased area on 11.11.2014 and calling upon the petitioner to show-cause as to why action should not be initiated against it for collection of normal seigniorage fee along with ten times penalty for having excavated and transported 314.24 cubic metres of black granite from outside the leased area. The petitioner submitted its reply dated 27.06.2015 stating that quarrying was being done systematically duly obtaining dispatch permits from time to time and that, as per the field conditions, the working pits were uneven in the leased area which was covered with weathered boulders. The petitioner claimed that its quarry manager and labour had measured and marked the lease boundaries as per the approved mining plan but they were lost and the

technical staff had excavated outside the leased area without having any intention to do so. The petitioner therefore requested dropping of further action stating that it was ready to pay the normal seigniorage fee. Consequent to this, the subject demand notice was issued holding the petitioner's reply unsatisfactory and untenable under the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for brevity, the Rules of 1966). Aggrieved thereby, the petitioner preferred a revision under Rule 35-A of the Rules of 1966. By the impugned Memo dated 02.12.2015, the revision was dismissed.

Notwithstanding the fact that the petitioner virtually conceded in its reply that quarrying operations were carried on by it beyond the leased area, the issue before this Court is whether exercise of revisionary power by the Government of Andhra Pradesh warrants interference on any ground?

In the writ affidavit, the petitioner raised the plea that the finding that it had excavated 314.24 cubic metres of black granite outside the leased area was not correct and was not borne out by the record. Notably, this aspect was not raised in the revision. Another plea raised by the petitioner was that the revisionary authority was not evenhanded in dealing with revisions filed before it. Reference was made to disposal of another revision by Memo dated 17.08.2015, whereby a five times penalty was reduced to a one time penalty, and it was contended that there was no rationale in applying different standards to similarly situated persons. The petitioner also placed on record Memos dated 22.01.2015 and 02.06.2015, whereby the revisionary authority had disposed of other revisions. The contention of the petitioner is that perusal of these orders would demonstrate the subjective and capricious nature of the decisions taken by the revisionary authority.

In his counter-affidavit, the Assistant Director of Mines and Geology, Guntur, stated that he was authorized to speak on behalf of the revisionary authority also. He stated that during the inspection carried out on 11.11.2014, it was found that the petitioner had excavated and transported 314.24 cubic metres of black granite from outside the leased area without

paying seigniorage fee and without obtaining dispatch permits. He further stated that knowingly or unknowingly, the petitioner had encroached into adjacent non-leased area and was liable to be penalized under the Rules of 1966. He therefore justified issuance of the Demand Notice dated 06.07.2015. As to the comparison made by the petitioner with the revision disposed of by Memo dated 17.08.2015, the Assistant Director stated that it was distinguishable on facts as it related to illegal utilization of minerals in formation of layouts and construction of buildings unlike the case on hand, where illegal quarrying was done outside the leased area. He concluded by stating that it was within the discretion of the revisionary authority to take a decision after reviewing the case on its merits and depending upon its gravity. He therefore justified dismissal of the revision.

Significantly, the counter-affidavit did not choose to advert to the other two revisions disposed of by the Memos dated 22.01.2015 and 02.06.2015, though it was filed after they were placed before the Court. The records pertaining to the Memos dated 17.08.2015, 22.01.2015 and 02.06.2015 were therefore directed to be produced.

Perusal of the Show-cause Notice dated 15.06.2015 manifests that no specific details of the inspection allegedly made on 11.11.2014 were disclosed therein. The relevant portion of the show-cause notice reads as under:

‘The Technical staff of this office and the Revenue Officers of Phirangipuram Mandal, as accompanied with the officials of the Regional Vigilance & Enforcement Officer, Guntur inspected the subject lease on 11.11.2014 and reported that the lessee has excavated and transported 314.24 Cu.meters of Black Granite from outside the leased area without payment of seig.fee and without obtaining valid dispatch permits from the Department, which is violation of Rule 26 of A.P.M.M.C. Rules, 1966. The details of assessment of the quantity excavated from outside the leased area are given below:

Mineral (Black Granite)	Despatches made from the year 2005-06 To 2013-14	Percen- tage of the des- patches	Quantity assessed for different categories (Col 2X3/100)	Rate of seig. fee	Seig.fee per cu.m. (in Rs.)	Ten times penalty (in Rs.)	Total Penalty (in Rs.)
1.	2.	3.	4.	5.	6.	7.	8.

Super Gangsaw	1639.325	28.93	90.91	2,475	2,25,003	22,50,030	24,75,033
Gangsaw	1953.157	34.47	36.59	2,000	73,180	7,31,800	8,04,980
Cutter size	2073.431	36.59	114.98	1,925	2,21,337	22,13,370	24,34,707
Total		100			5,19,520	51,95,200	57,14,720

.....’ The impugned Memo dated 02.12.2015 reproduced the aforesaid extract from the show-cause notice. The reasoning of the revisionary authority was that, knowingly or unknowingly, the petitioner encroached into the adjacent non-leased area which was a violation and was therefore liable to penalty under the Rules of 1966. The concluding remarks of the revisionary authority read thus:

‘12. In order to dispose of the Revision Application a personal hearing was conducted on 07.11.2015. The Revision Authority reviewed the case, duly taking into consideration of the material available on record, the grounds of the Revision Petitioner, the arguments put forth by the Petitioner and also by the Department supporting the action of the Assistant Director of Mines & Geology(Vig) Rajahmundry in raising the Demand Notice vide Lr.No.6904/Q/2007, dt 06.07.2015 of the Assistant Director of Mines & Geology, Guntur.

13. As seen from the material available on record, the Revision Petitioner has accepted in the grounds of revision that the illegal excavation was done outside the leased area due to non-visible boundaries and wrongful decisions of the staff working at the quarry and hence the Revision Petitioner is ready to pay the Seig.fee and has paid the Normal Seig.Fee vide Challan No. 4125, dt 04.08.2015.The ADM&G, Guntur has stated that the lessee has encroached the adjacent no. lease area knowing or unknowing by violating the APMMC Rules, 1966. Hence, the demand notice has been raised.

14. In view of the above facts, the Revision Authority has find no irregularity in issuance of the Demand Notice. Hence, the Revision Petition is hereby dismissed. The Revision Petition is disposed off accordingly under Rule 35-A of APMMC Rules, 1966.’

Sri P.Roy Reddy, learned counsel for the petitioner, would contend that there is no rhyme or reason to exercise of discretion by the revisionary authority in reducing or confirming the penalty imposed. He would submit that this untrammled exercise of discretion as per whims and fancies would violate the rule of equality and fair play in action enshrined in Article 14 of the Constitution.

Learned counsel would further point out that the revisionary authority did not deal with the vagueness in the show-cause notice *vis-à-vis* the details of the inspection made and as to quantification of the alleged illegally excavated mineral. However, as the petitioner practically admitted that it had conducted quarrying operations beyond the leased area and did not raise an issue before the revisionary authority either as to any vagueness in the show-cause notice or of being denied a full and proper opportunity of hearing, this Court is not inclined to go into those aspects of the matter.

This Court however finds merit in the contention of Sri P.Roy Reddy, learned counsel, that exercise of discretionary power by the revisionary authority under Rule 35-A of the Rules of 1966 is entirely whimsical and arbitrary. Penalty for unauthorized quarrying is levied under Rule 26 of the Rules of 1966 and a revision against such imposition of penalty would lie under Rule 35-A of the Rules of 1966. Rule 35-A reads as under:

‘35-A. Revision:-- The Government may either *suo motu* at any time or on an application made within ninety days, call for and examine the record relating to any order passed or proceeding taken by the Director, Joint Director, Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the legality or propriety of such order or as to the regularity of such proceedings and pass such order in reference thereto as they think fit;

Provided that no order adversely affecting any person shall be passed under this rule unless such person has been given an opportunity of making his representation.’

When the statute vests the Government, in the capacity of a revisionary authority, with quasi-judicial power, it must necessarily assume all the associated characteristics and features that go with such status. Any discretion vested in such a quasi-judicial authority must inevitably be exercised judiciously. Such discretion would not entitle the authority concerned to act with unfettered freedom so as to render an unreasoned decision based on pure caprice. It would be germane to recall the observations of the Supreme Court in ***Consumer Action Group v. State***

of T.N.^[1] that when a statute confers wide discretionary power on a statutory authority, it has to be exercised reasonably so as to stand the test of judicial scrutiny and the reasons recorded would alone disclose the justifiability of the exercise of such power, as application of mind by the authority at that time can only be revealed when the order records reasons.

In this regard, the impugned Memo dated 02.12.2015 does not pass muster. Reference is made therein to the fact that the petitioner, knowingly or unknowingly, encroached beyond the leased area. Once the revisionary authority gave the benefit of doubt to the petitioner that the lapse on its part could have happened unknowingly, reasons had to be recorded as to why the revisionary authority did not find it a fit case for reduction of penalty.

It is in this context that the orders passed in the other revisions cited by the petitioner gain significance.

The revision disposed of by Memo dated 17.08.2015 was in relation to a demand notice to pay normal seigniorage fee along with five times penalty for the mineral consumed in development of layouts, internal roads, construction of buildings, etc., without payment of seigniorage fee. The 'Note File' relating to the hearing of this revision by the Minister for Mines and Geology, Government of Andhra Pradesh, the revisionary authority, makes for an interesting reading. The relevant extract states thus:

'7. Heard the case on 27.02.2015 duly giving reasonable opportunity for personal hearing to the Revision Petitioner.

8. After taking into consideration of the material available on record, the grounds of the Revision Petitioner, the arguments put forth by the petitioner and also by the Department supporting the action of the ADM&G, Vizianagaram in raising the Demand vide Notice No:1772/Vg/2013-2, dt:20.06.2013, this Revisional Authority has partly convinced with the contentions of the Revision Petitioner and decided to award one time penalty.

9. The Revision Petitioner is hereby directed, to pay one time penalty together Normal S.Fee, if normal S.Fee not paid earlier, within a period of (30) days from the date of issue of the order.

10. This Revision petition is disposed off accordingly under Rule 35-A of APMMC Rules, 1966.

11. A detailed speaking order in the matter may be issued.'

Memo dated 17.08.2015 was then issued stating that the revisional authority has (*sic*) partly convinced with the contentions of the revision petitioner and decided to award one time penalty

The revision disposed of by Memo dated 22.01.2015 related to a demand notice raised in the context of illegal quarrying and transportation of gravel and the lease holder was asked to pay normal seigniorage fee along with ten times penalty. The 'Note File' relating to the hearing of this revision also requires extraction:

'7. Heard the case on 29.12.2014 duly giving reasonable opportunity for personal hearing to the Revision Petitioner.

8. After taking into consideration of the material available on record, the grounds of the Revision Petitioner, the arguments put forth by the petitioner and also by the Department supporting the action of the ADM&G (Vg), Guntur in raising the Demand Notice vide No. 1133/Vg/2014, dt:18.12.2014, this Revisional Authority has partially convinced with the contentions of the Revision Petitioner and decided to award two times penalty.

9. The Revision Petitioner is hereby directed, to pay two times penalty together with Normal S.Fee within a period of (30) days, if not paid the normal S.Fee not paid earlier, from the date of receipt of this order.

10. This Revision petition is disposed off accordingly under Rule 35-A of APMMC Rules, 1966.

11. A detailed speaking order in the matter may be issued.'

Thereupon, Memo dated 22.01.2015 was issued stating that the revisionary authority has (*sic*) partly convinced with the contentions of the revision petitioner and decided to award two times penalty.

Finally, the third revision disposed of by Memo dated 02.06.2015 was in relation to a demand notice for illegal excavation of gravel outside the permitted area and the lease holder was called upon to pay normal seigniorage fee along with five times penalty. The relevant portion of the 'Note File' relating to the hearing of this revision reads as under:

'9. Heard the case on 02.04.2015 duly giving reasonable opportunity for personal hearing to the Revision Petitioner.

10. After taking into consideration of the material available on record, the grounds of the Revision Petitioner, the arguments put forth by the petitioner and also by the Department supporting the action of the ADM&G, Guntur in raising the Demand Vide Notice No:9327/TP/2012,

dt:30.10.2014, this Revisional Authority has convinced with the contentions of the Revision Petitioner and decided to waive off the penalty levied by the ADM&G, Guntur.

11. The Revision Petitioner is hereby directed, to pay Normal S.Fee, if not paid earlier, within a period of (30) days from the date of issue of the order.

12. This Revision petition is disposed off accordingly under Rule 35-A of APMMC Rules, 1966.

13. A detailed speaking order in the matter may be issued.'

Memo dated 02.06.2015 was then issued stating that the revisionary authority has (*sic*) convinced with the contentions of the revision petitioner and decided to waive the penalty levied.

Though the revision disposed of by Memo dated 17.08.2015 may not be comparable on facts with the present case, the revision disposed of by Memo dated 02.06.2015 is very much on an even keel. Both cases related to alleged illegal excavation of mineral outside the permitted area. The Assistant Director of Mines and Geology had found that a case fit for imposing five times penalty. However, the revisionary authority let off the lease holder by completely waiving the penalty and the only reason put forth for the same was that the revisionary authority was 'convinced' with the contentions of the revision petitioner.

To put it mildly, the aforesaid records reveal a shocking state of affairs. Neither in the 'Note Files' nor in the 'Orders', did the revisionary authority deem it necessary to disclose the reasons as to why the penalty was reduced or waived in that particular case. Far more appalling is the fact that the revisionary authority directed that a 'detailed speaking order may be issued' without even disclosing its own reasons. To say that the revisionary authority is 'convinced' or 'partly convinced' with the contentions of the revision petitioners is neither here nor there. Reasons for such conviction must certainly be recorded. Worse, to pass on the responsibility of coming up with reasons while passing a speaking order amounts to complete abdication of jurisdiction by the revisionary authority.

When the revisionary authority was only exercising discretionary power and was not applying the letter of the law, it obviously had to indicate as to why discretion was being exercised in that particular

manner. Reduction of penalty in a case of illegal quarrying is not a matter to be left to the vagaries of the revisionary authority. Specific facts of the individual case would perhaps be the decisive factor for exercise of discretion one way or the other but the revisionary authority must, without doubt, disclose what the specific factors of that individual case were which weighed upon it to reduce the penalty or altogether waive it.

That apart, delegating the function of passing a 'speaking order' by supplementing reasons, after disposal of the revision, is wholly illegal as it is the Government which is the revisionary authority and the essential task of coming up with reasons cannot be handed over to the subordinates. It would have been a different situation had the revisionary authority indicated the reasons for its decision in the 'Note File' and merely required the subordinates to put it in proper form. However, that is not the case as is clear from the original record of the three revisions placed before this Court.

It is therefore demonstrated in no uncertain terms that statutory revisions under Rule 35-A of the Rules of 1966 are being whimsically disposed of by the revisionary authority without visible application of mind and without recording reasons. The revisionary authority seems to think that discretion vested in it under the statutory provision gives it infinite autonomy to decide the quantum of the penalty to be levied without any responsibility to disclose reasons therefor. This is indeed a deplorable situation which requires to be remedied immediately. It is the permanent executive which would have to advise and steer the political executive, the revisionary authority, in the right direction but it is manifest that there is patent failure in this regard. These observations would apply not only to the revisionary authority under the Rules of 1966 but to all other statutory authorities discharging quasi-judicial functions who need to be sensitized of their role and responsibility in the scheme of statutory adjudication.

The writ petition is accordingly allowed and the Memo dated 02.12.2015 is set aside. The matter is remitted to the revisionary authority for fresh consideration of the revision, as filed, giving due opportunity of hearing to the petitioner. The revisionary authority shall take care to

record reasons for its decision.

The Registry is directed to mark a copy of this order to the Chief Secretaries of the States of Telangana and Andhra Pradesh for issuing necessary instructions to the permanent executive to properly aid, assist and guide the political executive while discharging quasi-judicial functions.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

3rd JUNE, 2016

Note: L.R. copy to the marked.
B/o Svv

[\[1\]](#) (2000) 7 SCC 425