

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 33558 of 2015

ORDER:

The prayer of the petitioner in this case is as under:

“This Hon’ble Court may be pleased to issue an appropriate Writ, order or direction more particularly a Writ of Mandamus, declaring the action of the third respondent in not issuing dispatch permits to lift the Silica Sand to a tune of 76,238.4 MTs excavated in S.No.423/1 situated at Ponuguntapalem, Hamlet of Momidi Village Chillakur Mandal, Nellore District, pursuant to the mining lease bearing proceedings No.326/M1/97, dated 19.11.2001 of the 2nd respondent herein after inspecting the petitioner’s mines site by implementing the Memo issued by the 2nd respondent dated 23.09.2015 bearing Memo No.21152/R3-1/2015 as being illegal, arbitrary and contrary to the provisions of Mines and Minerals (Regulation and Development) Act, 1957 and the rules made thereunder and pass such other or further orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. Admittedly, the claim of the petitioner for dispatch permits to lift the Silica sand available with him is traceable to the order dated 07.09.2015 passed by the National Green Tribunal, Southern Zone, Chennai, in Application Nos.96 and 144 of 2015. However, the table of available stock in cubic metres in Paragraph 26 of the afore-stated order basing upon the report of the Assistant Director of Mines and Geology, Government of Andhra Pradesh dated 13.03.2013 reflects that the petitioner only had a stock of 879 cubic metres of Silica sand as on that date. According to the order passed by the National Green Tribunal, the petitioner is at liberty only to remove the available balance of Silica sand, as there was a further direction by the Tribunal not to proceed with further excavation of the mineral.

It is however the claim of the petitioner that notwithstanding the recording of the available balance by the Tribunal in its order dated 07.09.2015, he actually had stock to the tune of 76,238.40 metric tons which was to be lifted in terms of the Tribunal’s order.

3. The Assistant Director of Mines and Geology, Nellore District, filed a counter affidavit denying the claim of the petitioner that he had such a huge balance of Silica sand available with him as on the date of passing of the order by the Green Tribunal on 07.09.2015.

4. In the event the petitioner had any grievance with regard to the quantity of available amount of Silica sand as recorded by the National Green Tribunal in its order dated 07.09.2015, he should have immediately approached the Tribunal for rectification of the order. It is an admitted fact that 879 cubic metres, as recorded by the Green Tribunal, would only work out to 2198 metric tones and the claim of the petitioner is far in excess thereof as he states that he had 76,238 metric tons of Silica sand available with him.

4. That apart, this Court finds that the petitioner himself is unsure of the actual quantum of Silica sand available with him as he has now filed WP MP No.1225 of 2016 seeking to substitute the quantum of 76238.4 metric tones with 37485 metric tones.

5. In the light of the afore-stated dispute as to the quantum of Silica Sand available and as the petitioner is practically asking this Court to rewrite the order passed by the National Green Tribunal on 07.09.2015, which is not within its jurisdiction, the writ petition is dismissed. This order shall however not preclude the petitioner from working out his remedies before the appropriate forum.

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

JUSTICE SANJAY KUMAR

February 19, 2016

LMV