

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.23788 & 35639 of 2016

Date : 23.11.2016

WP No.23788 of 2016:

Between :

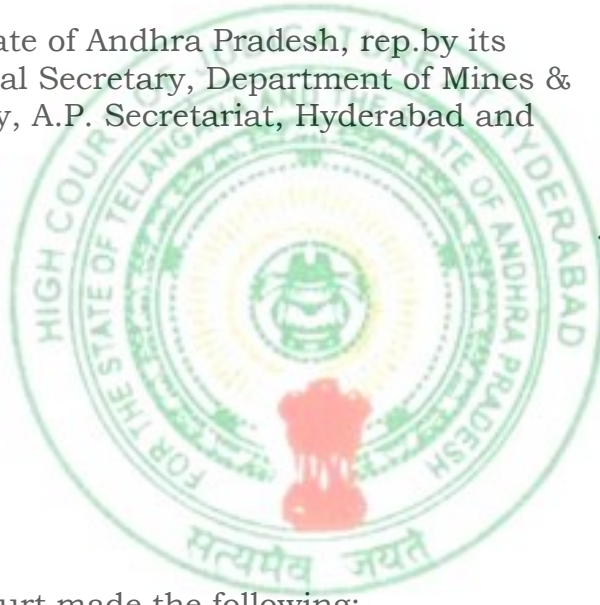
R.Raghupathy, s/o late R.Papaiah,
Aged 69 years, Occu:Agriculturist,
R/o. Kallupalle village, Yelakallu Panchayat,
V.Kota Mandal, Chittoor District. A.P.,

.... Petitioner

And

The State of Andhra Pradesh, rep.by its
Principal Secretary, Department of Mines &
Geology, A.P. Secretariat, Hyderabad and
others.

.... Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOS.23788 & 35639 of 2016

COMMON ORDER:

Petitioner in WP No.35639 of 2016 applied for quarry lease and stone crushing activity on 01.09.2015. On 29.06.2016, District Collector granted No Objection Certificate (NOC). However, so far no decision is made on the application. While so, alleging that petitioner unauthorizedly extracted road metal from the applied area without quarrying lease, petitioner was served demand notice dated 20.09.2016 directing petitioner to pay Rs.15,21,880/-. Amount determined includes double the cost of value of road metal extracted and fine. Aggrieved thereby, this writ petition is filed.

2. Petitioner in W.P.No.23788 of 2016 claims to be an agriculturist holding agriculture land adjacent to place where petitioner in W.P.No.35639 of 2016 was allegedly carrying on quarrying operations. Petitioner claims to have raised Mango orchard comprising 2000 trees, which are of 18 years old. Petitioner alleges that due to unauthorized quarrying operations and stone crushing by petitioner in W.P.No.35639 of 2016, the boulders are falling on his trees, damaging the trees. There is a consistent threat to life to his workers and to himself due to flying of stones from blasting operations. Further, stone dust is causing air pollution to himself, his workers and Mango trees. Alleging that illegal operations are allowed by officials and no action is taken in spite of repeated complaints, this writ petition is instituted.

3. Heard Sri Sitaram Chaparla, learned counsel for petitioner in WP No.35639 of 2016, Mr. Prashanth for Indus Law Firms, counsel for petitioner in W.P.No.23788 of 2016, learned Government Pleader for Mines & Geology (AP) for the respondents in WP No.35639 of 2016 and also for respondents 1 to 3 in WP No.23788 of 2016, learned Government Pleader for Revenue (AP) for respondent No.4, learned Government Pleader for Forests (AP) for respondent No.5, Sri Gurram Ramchander Rao, learned counsel for respondent No.6 and Sri Sitaram Chaparla learned counsel for respondent No.7. With the consent of learned counsels, writ petitions are disposed of. For convenience parties are referred to as arrayed in W.P.No.23788 of 2016.

4. Learned counsel for 7th respondent would submit that he was not undertaking quarrying operations. After applying for quarry lease, in anticipation of lease being granted he has developed the land and fixed the machinery. He would submit that there was no justification to impose fine and levy penal charges. He would further submit that the alleged demand is based on inspection report, whereas copy of inspection report was not furnished to him. Even assuming that there were quarrying operations, the demand is based on the assessment made in the inspection report and, therefore, to furnish effective reply, the copy of report has to be furnished to him. He, therefore, submitted that authority be directed to furnish copy of inspection report, afford due opportunity before penalizing him. He would submit that even otherwise the amount quantified is excessive and disproportionate. No justification is shown for such quantification and on this ground also demand notice is liable to be set aside. He further

submits that petitioner has no locus standi to oppose quarry license to 7th respondent and also regarding levy of fine and penalty.

5. Learned counsel for petitioner would submit that since April, 2016, 7th respondent was carrying on illegal quarrying and stone crushing activity. In spite of repeated complaints against such activity and the amount of damage caused to him, the authorities were not acting against 7th respondent and the response given to him would show soft pedaling by the authorities. He would submit that 7th respondent is not entitled to any relief. The demand made is valid and in fact he is liable for criminal action. He would further submit that 7th respondent was served with show cause notice calling for his explanation, but did not offer explanation. Thus, he is deemed to have accepted the allegations leveled and in fact there is truth in the allegations. He would submit that photographs enclosed to his writ petition would show stone quarrying and crushing operations. Averments in paragraph-3 of counter affidavit filed on behalf of 3rd respondent would show that there were quarrying operations. He further submitted that quarrying operations are still going on and authorities have not taken steps to stop quarrying operations. As conduct of 7th respondent is illegal, he cannot plead violation of principles of natural justice.

6. Learned Government Pleader submitted that 7th respondent failed to avail the opportunity provided to him. Since no explanation was filed and the report of inspection pointed out illegal quarrying, the demand was validly made. Admittedly,

7th respondent did not have quarrying lease and, therefore, could not have conducted quarrying operations. She would further submit that against demand notice appeal lies to Director under Rule 35 of Andhra Pradesh Minor Mineral Concession Rules, 1966. The 7th respondent ought to have availed the remedy of appeal. Thus, writ petition filed by 7th respondent is liable to be dismissed on that ground. She vehemently denied the contentions of learned counsel for petitioner and submitted that appropriate and prompt action was taken and the allegations are baseless and unfounded. However, learned Government Pleader fairly submitted that assessment of demand was based on inspection report and since 7th respondent did not sought for copy of the report, same was not furnished.

7. In reply to objection on maintainability of W.P.No.35639 of 2016 without availing remedy of appeal, learned counsel for 7th respondent would submit that after receiving the show cause notice in person, he has requested to furnish copy of inspection report and alleged memo dated 28.07.2016, though Assistant Director promised to furnish the copies, but they were not furnished. As he was waiting to receive the copies, he did not submit his explanation. By inviting attention to ground (a) in WP No.35639 of 2016, he submitted that he raised specific plea on this issue and the same is not denied by respondent authorities. He would therefore submit that as 7th respondent was denied reasonable opportunity and the demand notice is vitiated on that ground, 7th respondent need not be compelled to avail the remedy of appeal.

8. The order impugned by the 7th respondent in WP No.35639 of 2016 has penal consequences. The 7th respondent is required to pay Rs.15,21,880/-. It is specific assertion of the 7th respondent that he was not provided with the documents requested by him and that he was waiting to get the documents and, therefore, he could not submit his explanation within the time granted. This assertion of the 7th respondent is not denied. Therefore, the stand of the authorities that in spite of granting sufficient time, 7th respondent did not submit his explanation cannot stand the test of judicial scrutiny. Whenever the order of the authority visits with penal consequences, due procedure is required to be observed before imposing such penal consequences. It cannot be said, in the facts of this case, that there cannot be any explanation by the 7th respondent. It is permissible to 7th respondent to contend, at least, that the volume of extraction of road metal is not properly assessed and, therefore, the quantum of fine as well as the penalty imposed is not valid. Thus, when 7th respondent asserted and, which is not denied, that he was not given due opportunity, the demand notice is liable to be set aside and is accordingly set aside. The matter is remitted to the Assistant Director of Mines and Geology, Palamaneru. The Assistant Director of Mines and Geology is directed to furnish copy of the inspection report of the Technical Staff, Office of Deputy Director of Mines and Geology, and any other document relied by him within a period of one week from the date of receipt of copy of this order. On receipt of the said report/ documents, within a period of two weeks thereafter, petitioner shall submit his explanation. On consideration of the explanation, by

duly assigning reasons, the Assistant Director of Mines and Geology, shall pass orders as warranted by law.

9. Petitioners allege inaction on the part of the authorities in taking action against 7th respondent even though he was conducting quarrying operations. Learned counsel for the 7th respondent undertakes not to undertake quarrying operations till the permission is granted for undertaking quarrying operations. Further, while considering the application for quarrying operations of the 7th respondent, the respondent authorities are directed to take note of the objections of the petitioner. With reference to other allegations, in view of the fact that show cause notice was already issued followed by demand notice dated 20.09.2016, which is assailed in W.P.No.35369 of 2016, the cause in the writ petition does not survive to that extent. The said order is now set aside and the matter is remitted for consideration for passing orders afresh.

10. The issue in these writ petitions is confined to the demand notice holding as vitiated on the ground of violation of principles of natural justice and allegation of petitioner of inaction by respondent authorities in acting against 7th respondent. It is made clear that there is no expression of opinion on merits of the issues agitated by the respective parties and all issues are left open to be agitated in appropriate proceedings. The writ petitions are accordingly disposed of.

Miscellaneous petitions if any pending in these writ petitions shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 23.11.2016
Kkm/Rds

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