

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
W.P.No.3997 of 2009

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order of the State Government passed vide Memo No.12576/M-II (I)/2008-2 dated 17.01.2009, dismissing the revision filed by the petitioner and the order passed by the second respondent/Director of Mines and Geology vide Proceedings No.854/R3-1/2008 dated 04.03.2009, granting quarry lease in favour of the fifth respondent and the consequential work order issued by the fourth respondent/Assistant Director of Mines and Geology vide proceedings No.10341/Q/2007 dated 07.03.2009.

2. The facts and circumstances in nutshell leading to the filing of the present writ petition are as under:

2.1. On an application made by the petitioner, the Director of Mines and Geology vide proceedings No.30865/R3 (2)/2003 dated 31.05.2005 granted quarry lease for colour granite in favour of the petitioner over the area admeasuring 4.000 Hectares in Sy.No.103 of Konidena village, Ballikurava Mandal, Prakasam District, for a period of 20 years. Subsequently, a lease deed was also entered into and the same was followed by a work order issued by the Assistant Director of Mines and Geology vide proceedings No.6123/Q/2003 dated 24.06.2005, permitting the petitioner to commence the quarry operations.

2.2. The Director of Mines and Geology issued a show-cause-notice bearing No.33361/R3-2/2007 dated 22.11.2007, calling upon the petitioner to show cause as to why the said lease should not be determined while pointing out certain lapses on the part of the petitioner.

2.3. In response to the same, petitioner submitted an explanation dated 10.12.2007. Thereafter, the Director of Mines and Geology vide proceedings No.33361/R3-2/2007 dated 19.12.2007, determined the quarry lease of the petitioner. As against the said order, petitioner preferred revision on

10.01.2008 before the State Government/first respondent herein under Rule 35-A of the A.P. Minor Mineral Concession Rules, 1966 (hereinafter called 'the Rules'). The State Government by virtue of the order vide Memo No.17.01.2009 dismissed the said revision.

3. In the above background, calling in question the validity and the legal sustainability of the said order passed by the State Government, confirming the order of the Director of Mines and Geology, the present writ petition came to be filed.

4. Vide orders dated 25.06.2009 in WPMP.No.16309 of 2009, the respondent No.5 in whose favour the Director of Mines and Geology granted lease on 04.03.007 for the subject area, came on record.

5. Heard Sri E.Manohar, learned Senior Counsel appearing for Sri Pannala Srinivas, learned counsel for the petitioner on record, learned Government Pleader for Mines and Geology for respondents 1 to 4 and A.Sudershan Reddy, learned senior counsel appearing for Sri P.Roy Reddy, learned counsel for the respondent No.5 on record apart from perusing the material available on record.

6. Submissions/contentions of the learned Senior Counsel for the petitioner:

6.1. The orders impugned in the writ petition are illegal, arbitrary, 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 A.P. Minor Mineral Concession Rules, 1966 (hereinafter called 'the Rules')

6.2. The orders impugned are in contravention of Rule 12 (5) (h) (vii) of the Rules and the Director of Mines and Geology did not issue any declaration as prescribed in the said Rule.

6.3. The grounds on which the Director of Mines and Geology issued the impugned order are unsustainable and cannot stand for the twin

tests of reasonableness and rationality.

6.4. The mining lease rights are valuable rights and cannot be determined overnight on false and frivolous grounds like temporary non-working. So long as the petitioner pays the advance dead rent as stipulated under the statute, the respondents under no circumstances are legally entitled to determine the quarry lease in the interest of mineral development.

6.5. At no point of time, till the issuance of the impugned determination proceedings, a declaration as required under Rule 12 (5) (h) (vii) was issued, as such, the question of treating the quarry as lapsed would not arise as per law and the petitioner furnished a fee of Rs.2,500/- by way of a challan No.3870 dated 10.01.2008 as required under the proviso to the said Rule.

6.6. The revisional authority did not assign any reasons for arriving at conclusion and did not apply its mind.

6.7. The Director of Mines and Geology in the show-cause notice issued under Rule 12(5)(h)(vii) did not fix any time for rectification of the lapses, if any and in fact the petitioner sought 30 days time for commencement of the quarry operations.

In support of his submissions/contentions, the learned counsel for the petitioner places reliance on the judgment of this Court in ***K.PURNA CHANDRA RAO V. THE COLLECTOR, GUNTUR DISTRICT AND OTHERS***^[1].

7. Contentions of learned Government Pleader for Mines and Geology appearing for respondents 1 to 4.

7.1. There is no illegality nor there is any procedural infirmity in the questioned orders, as such, the present writ petition is not maintainable under Article 226 of the Constitution of India.

7.2. Only after meticulously and thoroughly adhering to the procedure stipulated under the statutory Rules, the Director of Mines and Geology passed the impugned order and the State Government confirmed the same in revision.

8. Contentions of learned Senior Counsel, appearing for 5th respondent

8.1. In the absence of any statutory or constitutional violation, the present writ petition is not maintainable under Article 226 of the Constitution of India.

8.2. The Director of Mines and Geology vide proceedings dated 04.03.2009, granted quarry lease in favour of the fifth respondent strictly as per the Rules and pursuant to which a statutory lease was also entered into and the Assistant Director of Mines and Geology issued a work order and in terms of the same the fifth respondent started quarry operations in the leased area and has been carrying on the same since then.

8.3. Since the petitioner violated the statutory rule and also the conditions of the lease and failed to commence the quarry operations in accordance with the Rules and the Covenants of the lease, the Director of Mines and Geology is perfectly justified in passing the impugned order. No equity lies in favour of the petitioner as the fifth respondent has invested huge sums of money in connection with the leased area.

To bolster his submissions and contentions, the learned Senior Counsel places reliance on the judgments in ***ASSISTANT EXCISE COMMISSIONER AND ORS. VS. ISSAC PETER AND ORS.***^[2], ***MARY v. STATE OF KERALA AND ORS.***^[3] and ***THE RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION v. DIAMOND AND GEM***

DEVELOPMENT CORPORATION LTD ^[4]

9. In the above backdrop, now the issues that boil down for consideration of this Court are:

1. Whether the orders impugned are in accordance with law?
2. Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

10. The information available before this Court manifestly discloses that while issuing the show-cause notice the Director of Mines and Geology pointed out the following lapses on the part of the writ petitioner:

- “1. Quarry is not working since execution of lease deed i.e., on 24.06.2005.
2. Boundary pillars are not erected and maintained.
3. No records and responsible person were available at quarry site.
4. The lessee has to pay Rs.18,710—of Mineral Revenue arrears towards interest part.”

11. Responding to show-cause notice, the petitioner herein stated in its explanation dated 10.12.2007 as follows:

“We hereby submit the following few lines for your kind consideration with respect to the breaches mentioned in the Show Cause Notice.

1. We are starting the quarry within 30 (Thirty) Days. The machinery and manpower have being arranged for starting the quarry.
2. We have marked the boundary marks with Yellow colour indicating the boundaries of the lease area.
3. The required records will be submitted to your good selves

or to the Asst Director of Mines & Geology, Ongole as and when required by you or soon after the quarry is started.

4. We have already paid the due amount of Rs.18,710/- vide Challan No.4762 Dated 24.08.2007 and hence there are no arrears to pay by our company. (Enclosed True copy of Challan)."

12. A perusal of the impugned order dated 19.12.2007, passed by the Director of Mines and Geology, amply makes it candid that on the ground that the writ petitioner failed to commence the quarry operations within two years, the Director of Mines and Geology passed the impugned order under Rule 12 (5) (h) (vii) of the Rules. The said aspect of

non-commencement of the quarry operations would also be very much evident not only from the reply submitted to the show-cause notice, but also from the affidavit filed in support of the writ petition. It is noteworthy that in Ground 'B' of paragraph 4 of the writ affidavit it is stated that the petitioner company legitimately requires a few more years' time in order to establish commercial market/demand for its variety of colour granite both in the local as well as international markets. The Director of Mines and Geology initiated action and passed the impugned order under Rule 12 (5) (h) (vii) of the Rules and at this juncture it may be apposite to refer to the said provision of law, which reads as under:

"12 (5) (h) (vii) Lapsing of Licence or Lease:—

Where the licensee shall not commence prospecting operations within a period of six months from the date of execution of licence or is discontinued for continuous period of six months after commencement of such prospecting operations, the Director shall by an order declare the P.L. as lapsed and communicate the declaration to the licensee.
(b) Where the mining operations are not conducted within a period of two years from the date of execution of the lease or is discontinued for a continuous period of two years, after commencement of such mining operation, the Director shall by an order declare the lease as lapsed and

communicate the declaration to the lessee:

Provided that where the licensee or lessee submits an application to the Director within a period of one month from the date of receipt of such order and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of prospecting or quarrying operations or discontinuance thereof, the Director may recommend to the Government for revival of the licence or lease:

Provided further that such application shall be accompanied by payment of a fee of Rs.2,500/- (Rupees Two Thousand and Five Hundred) to the State Government.”

13. The above provision of law authorises and empowers the authorities to declare the lease as lapsed in the event of the lessee failing to commence the quarry operations, within two years, from the date of execution of the lease. In the instant case, the material available on record amply discloses that the Director of Mines and Geology, only after complying with the provisions of law and the principles of natural justice passed the impugned order and the State Government/revisonal authority also after clearly and categorically recording cogent and convincing reasons, dismissed the revision filed by the petitioner. As rightly pointed out by the learned Senior Counsel, appearing for the fifth respondent, no violation nor any infringement of either statutory or constitutional right of the writ petitioner could be pointed out and in the absence of the same this Court is neither persuaded nor inclined to interfere with the questioned orders.

14. Yet another ground raised by the petitioner is that though the petitioner applied for revival of the lease by paying the amount as per the proviso to Rule 12 (5) (h) (vii) of the Rules, the authorities did not consider. This contention also deserves to fall on ground in view of the reason that except filing the challan the petitioner herein did not place on record any such application.

15. The judgment cited by the learned counsel for the petitioner in

K.PURNA CHANDRA RAO V. THE COLLECTOR, GUNTUR DISTRICT (1 supra) would not render any assistance to the petitioner in the facts and circumstances of the case. In this connection, it may be apt and appropriate to refer to the judgments cited by the learned Senior Counsel for the fifth respondent.

16. In *ASSISTANT EXCISE COMMISSIONER AND ORS. v. ISSAC PETER* (2 supra), the Hon'ble Apex Court, at paragraphs 25 and 26, held as follows:

“25. Learned Counsel for the Respondents also sought to rely upon the Rule of legitimate expectation which the licencees entertained in view of the practice during previous years. Firstly, the Rule cannot be invoked to modify or vary the express terms or contract, more so when they are statutory in nature. No decision has been brought to our notice supporting the said proposition. Secondly, in view of the scarcity that had developed during the last two months of the previous excise year (i.e., during February and March, 1981), the plea of legitimate expectation sounds quite weak. That the bidders were apprehensive and highly sceptical of alleged official assurances is proved by the repeated adjournment of auction and the fact pleaded by the licencees themselves that during the said excise year (1981-82) half the shops in the State remained unsold. It is inconceivable that the licencees yet expected legitimately that additional supplies equal to the previous year's additional supplies would be supplied during this year. The plea is unacceptable

26. Learned Counsel for Respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which State is a party. It is submitted that the State cannot act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory - at least to the extent of previous year's supplies - by applying the said doctrine. It is submitted that if this is not done, the licencees would suffer monetarily. The other purpose is to say that if the State is not able to so supply, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and

to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned Counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness of the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract - or rather more so. It is one thing to say that a contract - every contract - must be construed reasonably having regard to its language. But this is not what the licencees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in a converse case, i.e., where the State has abundant supplies and wants the licencees to lift all that stocks. The licencees will undertake no obligation to lift all those stocks even if the State suffers- loss. This one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate. The decisions cited by the learned, counsel for the licencees do not support their proposition. In Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay [MANU/SC/0330/1989](#) : [1989]2SCR751 , it was held that where a public authority is exempted from the operation of a Statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine. It may be noted that though the said principle was affirmed, no relief was given to the appellant in that case. Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors. [MANU/SC/0504/1991](#) : AIR1991SC537 was a case of mass termination of District Government Counsel in the State of U.P. It was a case of termination from a post involving public element. It was a case non-government servant holding a public office, on account of which it was held to be a matter within the public law field. This decision

too does not affirm the principle now canvassed by the learned Counsel. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does no guarantee profit to the licencees in such contracts. There is no warranty against incurring losses. It is a businesses for the licencees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the Contract. It is not as if the licencees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation. It is not necessary to say more than this for the purpose of these cases. What would be the position in the case of contracts entered into otherwise than by public auction, floating of tenders or negotiation, we need not express any opinion herein.”

17. In the case of **MARY** (*supra* 3), the Hon’ble Apex Court at paragraphs 18, 24 and 25, held as follows:

“18. The doctrine of frustration excludes ordinarily further performance where the contract is silent as to the position of the parties in the event of performance becoming literally impossible. However, in our opinion, a statutory contract in which party takes absolute responsibility cannot escape liability whatever may be the reason. In such a situation, events will not discharge the party from the consequence of non-performance of a contractual obligation. Further, in a case in which the consequences of non-performance of contract is provided in the statutory contract itself, the parties shall be bound by that and cannot take shelter behind Section 56 of the Contract Act. Rule 5(15) in no

uncertain terms provides that “on the failure of the auction purchaser to make such deposit referred to in sub-rule 10” or “execute such agreement temporary or permanent” “the deposit already made by him towards earnest money and security shall be forfeited to Government”. When we apply the aforesaid principle we find that the appellant had not carried out several obligations as provided in sub-rule (10) of Rule 5 and consequently, by reason of sub-rule (15), the State was entitled to forfeit the security money.

24. We have given our most anxious consideration to the submission advanced and we do not find any substance in the submission of the learned counsel for the appellant and the decision relied on by her, in fact, carves out an exception in case of a commercial transaction. The duty to act fairly is sought to be imported into the statutory contract to avoid forfeiture of the bid amount. The doctrine of fairness is nothing but a duty to act fairly and reasonably. It is a doctrine developed in the administrative law field to ensure rule of law and to prevent failure of justice where an action is administrative in nature. Where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action. But, in our opinion, it certainly cannot be invoked to amend, alter, or vary an express term of the contract between the parties. This is so even if the contract is governed by a statutory provision i.e. where it is a statutory contract.

25. It is one thing to say that a statutory contract or for that matter, every contract must be construed reasonably, having regard to its language. But to strike down the terms of a statutory contract on the ground of unfairness is entirely different. Viewed from this angle, we are of the opinion that Rule 5(15) of the Rules cannot be struck down on the ground urged by the appellant and a statutory contract cannot be varied, added or altered by importing the doctrine of fairness. In a contract of the present nature, the licensee takes a calculated risk. Maybe the appellant was not wise enough but in law, she can not be relieved of the obligations undertaken by her under the contract. Issac Peter (supra) supports this view and says so eloquently in the following words:

“26.....In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or

reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract — or rather more so. It is one thing to say that a contract — every contract — must be construed reasonably having regard to its language...” “

18. In the case of ***THE RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION.***

(*supra* 4), the Hon’ble Apex Court, at paragraphs 15, 16 and 23, held as follows:

“15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. (Vide: **Nagubai Ammal and Ors. v. B. Shama Rao and Ors.**: AIR 1956 SC 593; **C.I.T. Madras v. Mr. P. Firm Muar** : AIR 1965 SC 1216; **Ramesh Chandra Sankla etc. v. Vikram Cement etc.**: AIR 2009 SC 713; **Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.** : AIR 2011 SC 1869; **Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Co. Limited** : (2011) 10 SCC 420; and **V. Chandrasekaran and Anr. v. The Administrative Officer and Ors.** : JT 2012 (9) SC 260.

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot

approve and disapprove is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”

23. However, it has been contended by learned counsel representing the respondent-State that doctrine of fairness or reasonableness is not capable to be invoked in a statutory contract. Strong reliance has been placed on a decision of this Court in the case of Assistant Excise Commissioner and Others v. Issac Peter and Others (1994) 4 SCC 104, and our attention has been drawn to the following passage.

“26.....We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract(State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts.”

19. In the facts and circumstances of the case and having regard to the provisions of the A.P. Minor Mineral Concession Rules, 1966 and the law laid down in the above referred judgments cited by the learned Senior counsel, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the petitioner has failed in making out a case, warranting any interference or indulgence of this Court under Article 226 of the Constitution of India.

20. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:06.01.2016
grk



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

Dated: 06th January, 2016

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[\[1\]](#) 1988(2) LS 149

[\[2\]](#) (1994) 4 SCC 104

[\[3\]](#) (2014) 14 SCC 272

[\[4\]](#) (2013) 5 SCC 470