

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

W.P.No.29999 of 2010

-

%20.06.2016

#R.Anantha Narayanan represented by
GPA Holder S.Shiva Prakash.

...Petitioner

VERSUS

\$ The Government of Andhra Pradesh
represented by its Secretary, Industries & Commerce,
Hyderabad and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner:

Sri N.Subba Rao

^Counsel for Respondents 1 to 4:
and

Government Pleader for Mines

Geology

Counsel for Respondent No.5 :

Sri K.Ananda Rao

? Cases referred

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.29999 OF 2010

Between:

R.Anantha Narayanan represented by
GPA Holder S.Shiva Prakash.

.

.. Petitioner

AND

The Government of Andhra Pradesh
represented by its Secretary, Industries & Commerce,
Hyderabad and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED:20.06.2016

SUBMITTED FOR APPROVAL:

-

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

- | | | |
|---|--|-----|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |
| 3 | Whether His Lordship wish to see the fair copy of the Judgment? | Yes |

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

W.P.No.29999 of 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the orders of the first respondent State Government issued vide Memo No.8727/M.II (1)/2009-5, dated 16.11.2010.

2. Heard Sri N. Subba Rao, learned counsel for the petitioner and the learned Government Pleader for Mines and Geology for the respondents 1 to 4 and Sri K. Ananda Rao, learned counsel for the fifth respondent.

3. The petitioner and the fifth respondent herein submitted applications for grant of quarry leases for granite on 16.05.2007 and 04.05.2007 respectively for the areas admeasuring 10.000 and 4.000 hectares in Sy.No.514 of Ilapavuluru village, Chimakurthy Mandal, Prakasam district. Pursuant to the proposals submitted by the Assistant Director of Mines and Geology, Ongole, Prakasam District/fourth respondent herein for rejection of the quarry lease application of the fifth respondent, the Director of Mines and Geology/second respondent herein issued a show-cause notice vide proceedings No.19739/R3-2/2007, dated 14.07.2008, asking the fifth respondent to showcase as to why his application should not be rejected under Rule 12 (5) (d) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (hereinafter called the Rules) on the following grounds:

1. The signature of the licensed surveyor is not obtained on the applied sketch as required under the Rules.
2. The applicant has failed to attend the survey and inspection after giving two chances by the Assistant Director of Mines and Geology, Ongole.
4. The fifth respondent herein failed to submit any reply to the show cause notice which resulted in proceedings issued by the Director of

Mines and Geology vide D.Dis.No.19834/R3-2/2007, dated 12.09.2008, rejecting the application of the fifth respondent under Rule 12 (5) (d) of the Rules. As against the said order of rejection passed by the Director of Mines and Geology dated 12.09.2008, the fifth respondent herein filed a revision before the State Government under Rule 35-A of the Rules. The State Government vide Memo No.16960/M.II(1)/2008, dated 22.05.2009, allowed the said revision and granted one more chance to the fifth respondent for attending the survey and inspection while stipulating three months' time for completion of the said process. Challenging the validity of the said memo dated 22.05.2009, issued by the first respondent State Government, the petitioner herein filed WP.No.11864 of 2009 before this Court. This Court, by way of an order dated 07.09.2009, allowed the said writ petition and the operative portion of the said order at paragraphs 14 and 15 read as under:

“14. It is no doubt true that certain reasons in elaboration had been referred to in the counter affidavit filed by the 5th respondent. When the 1st respondent while exercising the statutory power under Rule 35-A of the Rules specified above, is expected to decide the matter in accordance with Law, this Court is not inclined to express any opinion whether in the facts and circumstances of the case, the Revision should have been allowed or not, but suffice to state that the 1st respondent as a statutory authority while exercising powers under Rule 35-A of the Rules had not made a speaking order. Whether in the exceptional circumstances, the bar imposed relating to the giving of one more chance beyond two chances as specified by the Circular Memo and if so under what circumstances, these aspects also may have to be considered. Further, certain submissions had been made that it would be a futile exercise even if the Revision to be allowed by the 1st respondent in the light of the fact that there was no valid application filed by the 5th respondent in the eye of law, may have to be also incidentally considered while deciding the Revision. Hence, without touching the merits and demerits, the impugned order is set aside and the matter is remitted to the 1st respondent to give opportunity to both the parties to advance their submissions and decide the matter afresh in accordance with law.

15. Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.”

5. Subsequently, the first respondent State Government by way of Memo No.8727/M.II (1)/2009-5, dated 16.11.2010, disposed of the revision filed by the fifth respondent, permitting the fifth respondent for another chance of survey and inspection for demarcation so as to consider his case to the extent 2.450 hectares and the case of the petitioner herein to an extent of 6.129 hectares on proportionate basis.

6. Assailing the validity and the legal sustainability of the said memo dated 16.11.2010, issued by the first respondent State Government, the present writ petition came to be filed.

7. This Court, while ordering *Rule Nisi* on 01.12.2010 in WPMP.No.38211 of 2010 granted interim suspension of the impugned Memo dated 16.11.2010 to the extent of 2.450 hectares ordered for demarcation of the fifth respondent.

8. Counter affidavits have been filed by the respondents 2, 3 and 4 and also by the unofficial respondent No.5, denying the averments and allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

9. It is contended by the learned counsel for the writ petitioner that the questioned memo which ordered for demarcation of 2.450 hectares in favour of the fifth respondent is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India and is opposed to the very spirit and object of the Andhra Pradesh Minor Mineral Concession Rules, 1966. It is also the submission of the learned counsel that the impugned action is also in contravention of the memo dated 16.11.2008 of the Director of Mines and Geology. It is further contended that the application submitted by the fifth respondent is an invalid application and as per Rule 12 (5) (a) (i) of the Rules, the first respondent grossly erred in giving opportunity to the fifth respondent.

10. On the contrary, it is contended by the learned Government

Pleader so also the learned Counsel for the fifth respondent herein that there is no illegality nor there is any procedural infirmity in the impugned action and as such the present writ petition is not maintainable and the action impugned is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that since the first respondent exercised its discretion under Rule 35-A of the Rules, in the absence of any perversity in such action, petitioner herein is not entitled for any relief from this Court. It is the further submission of the learned counsel for the fifth respondent that due to illness fifth respondent could not attend the survey earlier and the absence of signature on the sketch is a curable defect and on the said ground the application of the fifth respondent cannot be rejected.

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

1. Whether the impugned action is in accordance with the provisions of Rule 12 (5) of the Andhra Pradesh Minor Mineral Concession Rules, 1966?
2. Whether the impugned action is sustainable and tenable in view of the Memo bearing No.24654/R3-1/06, dated 16.01.2008, issued by the Director of Mines and Geology and whether the first respondent is justified in taking the lenient view in giving another chance to the fifth respondent?

Issue No.1

12. In order to adjudicate the above mentioned issue No.1, it would be appropriate to refer to relevant provisions of Rule 12 (5) (a) (i) of the Andhra Pradesh Minor Mineral Concession Rules, 1966, which read as under:

“12.(5)(a)(i) A Prospecting Licence or Quarry Lease for 7[granite useful for cutting and polishing and marble] shall be granted by the Director on an application made to the Assistant Director of Mines and Geology concerned in Form N/P and each such application for grant of P.L. or Q.L. shall be accompanied by a sketch drawn to the Scale

demarcating the boundaries for easy identification on the ground duly signed by the applicant and by a qualified Surveyor and by a treasury or bank challan for Rs. 5,000/- (Rupees Five thousand) towards non-refundable application fee and a deposit of Rs. 10,000/- (Rupees Ten thousand) for every hectare or part thereof in the form of crossed Demand Draft obtained in favour of the Assistant Director Mines and Geology of the District concerned in whose jurisdiction the area falls. The application fee and deposit are subject to revision from time to time. The deposit is refundable to the unsuccessful applicants. In respect of applications in whose favour the P.L. is granted the deposit amount shall be adjusted towards security deposit and the balance, if any, shall be refunded. In respect of applicants in whose favour the Q.L. is granted the same shall be adjusted towards advance dead rent.

[Provided that the Andhra Pradesh Mineral Development Corporation Limited, (a wholly owned State Government Undertaking) is exempted from payment of deposit in case of application in Forest area.] ”

13. It is very much evident from a reading of the above provision of law that the sketch appended to the application shall bear the signature of the licensed surveyor also. It is a settled law that when a statute mandates a particular thing to be done in a particular manner, the same should be adhered to otherwise the very purpose of the provisions of law would be frustrated. In the instant case, it is an admitted reality that the sketch appended to the application of the fifth respondent does not contain the signature of the licensed surveyor. In the considered opinion of this Court the same cannot be taken as a technical defect, as submitted by the learned counsel for the fifth respondent. Therefore, the application submitted by the fifth respondent here cannot be regarded as a valid application in the eye of law. In view of the same, Point No.1 is answered in favour of the petitioner and against the fifth respondent.

Issue No.2

14. Coming to the issue No.2, it is the submission of the learned counsel for the petitioner that according to circular Memo dated

16.01.2008, when an applicant fails to utilise two chances for attending survey, such application is liable to be rejected. The said circular dated 16.01.2008 is placed on record along with the writ petition as a material paper. The said circular reads as under:

“The attention of all the Asst. Directors of Mines and Geology is invited to the subject and matter cited. They are informed that several instances have come to the notice of the undersigned that some of the Asst. Directors of Mines and Geology are giving 3 to 5 chances to the applicants for attending survey and inspection of the applied area which is contrary to the decision taken by the Director of Mines and Geology.

They are informed that in order to reduce the pendency of Quarry Lease applications for Granite it has been decided to give only two chances to the applicants for attending survey and inspection of the applied area. If the applicants failed to utilize the two chances such applications shall be rejected.

Therefore all the Asst. Directors of Mines and Geology are hereby directed to give only two chances to the applicants for attending survey and inspection, if they fails to utilize the same necessary proposals shall be submitted to the Director of Mines and Geology duly recommending for rejection of the applications.

In the 1st notice and 2nd notice they may clearly be informed that no thrice opportunity will be given and the appearance will be recommended for rejection of they fail to attend for survey inspection.”

15. In the instant case, contrary to the said circular one more opportunity is sought to be given to the fifth respondent, which cannot be sustained in the eye of law. It is required to be noted at this juncture that in fact in response to the show-cause notice issued by the Director of Mines and Geology on 14.07.2008, the fifth respondent herein did not submit any explanation nor the fifth respondent appeared for survey on 08.08.2007 and 9.08.2007 nor the fifth respondent attended for survey and inspection proposed on 23.06.2009 pursuant to the earlier orders of the State Government dated 22.05.2009. Therefore, this Court does not find any justification on the part of the first respondent in granting one more opportunity to the petitioner in deviation to their own instructions.

Therefore, issue No.2 is also answered in favour of the petitioner and against the respondents.

7. For the aforesaid reasons, writ petition is allowed, declaring Memo No.8727/M.II (1)/2009-5, dated 16.11.2010 to the extent of ordering demarcation of 2.430 hectares in favour of the fifth respondent as illegal and arbitrary and consequently the respondents 1 to 4 are directed to consider granting quarry lease in favour of the petitioner in accordance with law in respect of the applied area, within a period of two months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:20.06.2016

Grk



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

W.P.No.29999 of 2010

Dated:20.06.2016

grk