

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.19755 of 2006

ORDER:

This writ petition is filed questioning the action of the respondents in deducting seigniorage charges for the earth used for the standard bank and canal embankment obtained from the useful soils of canal cutting as if being illegal, arbitrary, high handed and contrary to the agreement, dated 25.02.2005, and to declare that the petitioner is entitled for reimbursement and also declare the respondents have no authority to recover the seigniorage charges.

2. Heard both the learned counsel and perused the material on record.

3. The petitioner is a civil contractor and he was entrusted with the work of investigation, preparation of hydraulic particulars, designs and drawings and excavation of HNSS main canal from KM 20.000 to KM 41.200/4k2.000 including CM & CD works and distributory system to feed an ayacut of 2300 acres Kharif I.D in Kurnool.

4. When the bills were submitted, the authorities have deducted seigniorage charges @Rs.20/- per cubic meter. This deduction is said to be contrary to the agreement and without any notice, and further the seigniorage charges are not leviable in the instant case.

5. The respondents contended that as per Clause-104 of the agreement, seigniorage has to be recovered on earth used for embankment and consequently, when the bills were submitted, a sum of Rs.5,34,436/- was deducted towards seigniorage charges. According to the respondents, the said deduction is in accordance with the agreement

and the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (for short “the Act”).

6. The controversy is as to whether the authorities are justified in collecting seigniorage charges from the petitioner-contractor. This issue fell for consideration in several authorities, one of which is *Larsen & Toubro Limited v Executive Engineer, Public Health Engineering Department*¹. The facts in the said case were similar to the one in hand. After taking into consideration the provisions of the Act and the nature of the work entrusted to the contractor, this Court, in the above referred judgment, held that no seigniorage fee can be levied. At paras-14, 15 & 17 this Court made the following observations:

14. Strict construction of the Rule would lead to a conclusion that the seigniorage fee can be levied only when a quarry lease is granted and mineral is extracted from it. In other words seigniorage fee cannot be levied, in case the mineral is extracted from an area, which is not leased or the person is not a lessee. This would lead to an absurd situation, wherein a lessee becomes liable to pay the fee, but not the one, who undertakes such activity, without valid lease.

15. In case the petitioners have undertaken any activity of mining and used or sold the mineral recovered in the process, they would be under obligation to pay not only the seigniorage fee, but also the penalty thereon.

17. It is not even alleged that any of the petitioners have taken up mining as their principal activity. It is in the course of their civil works, that the trenches are dug. This naturally lead to the accumulation of the resultant gravel or earth by the side of the trench. Since the digging of the trench is for the purpose of civil work, it cannot be treated as mining activity at all. Added to that, the digging was not undertaken with an objective of recovering gravel or any other specified material. On the other hand, the gravel or earth came to be

¹ 2013 (3) ALT 602

removed in the course of digging the trench. Even if stone comes in the trench, that has to be blasted or cut. On that account, the concerned individual or the agency cannot be said to have undertaken mining activity.”

7. In view of the above authoritative pronouncement, it is held that the petitioner do not come within the ambit of being a person, who is connected with any mining activity and hence cannot result in obligation to pay the seigniorage fee. Therefore, the action of the respondents in deducting Rs.5,34,436/- towards seigniorage charges cannot be sustained.

8. The Writ Petition is accordingly allowed, as prayed for. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 6th October, 2017
Dsr

M.S.K.JAI SWAL, J

