

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No. 7681 of 2012

ORDER:

Heard Smt.T.Vijayalaxmi, representing M/s.Shoba.N, counsel for petitioners and the Assistant Government Pleader for Mines and Geology for Respondent Nos.1 to 4. There is no representation for Respondent No.5.

2. Petitioners pray for mandamus declaring Memo No.14676/ M.II(1)/ 2007-3, dated 06-05-2010, and the consequential show cause notice dt. 4346/ KGPU/ 2010, dated 02.02.2012, as illegal, arbitrary and violative of principles of natural justice.

3. At the request of Respondents, this Court on 24.01.2017 and on 01.02.2017 granted time to verify whether petitioners herein were parties before the Government in Revision case pending in file No. No.14676/ M.II(1)/ 2007-3 or not. After getting written instructions, the Assistant Government Pleader informs that the petitioners were not parties before the 1st Respondent-Government in the Revision referred to above. Having regard to the statement of the Respondents, this Court is of the view that the facts stated in detail need not be adverted to or record a finding on each one of the objections raised by the petitioners.

4. For the purpose of disposing of the present writ petition, the following circumstances are stated:

The 4th Respondent issued demand notice No.1019/APMDR/ 2003, dated 03.07.2006, calling upon the 5th Respondent to pay normal seigniorage fee and ten times penalty, amounting to Rs.1,18,00,800/- by mining 13410 M.Ts of limestone slabs. The 5th Respondent filed Revision before the 1st Respondent challenging the demand notice dt.03.07.2006. Through order dated 06.05.2010, the Revision filed by the 5th Respondent was disposed of setting aside the demand notice dt.03.07.2006 issued to 5th Respondent. The 1st Respondent further directed the 4th Respondent to raise demand against persons, as stated in Paragraphs 10 & 11 of counter affidavit, and recover the amount and penalty as per the norms. For appreciating the follow up action taken up by 4th Respondent, this Court finds it useful to excerpt the stand of the 1st Respondent in Paragraphs 10 and 11, which reads thus:

“10. In the revision application the petitioner has submitted that on 23.07.1997 an extent of 8.000 hectares of quarry lease has been sanctioned to third party erroneously in Sy.No.115 out of the land already alienated vide G.O.Ms.No.92, dt. 11.02.1997 to Krishna Godavari Power Utilities Limited (KGPUL) through Dy.Director of Mines, Hyderabad, Proceedings No.1677/NLG/Q/ 97, dt. 23.07.1997. The petitioner has submitted that on noticing this they have filed a representation dt.23.07.1997 and the DDMG, Hyderabad, after

due verification on the spot in the year 1997 has reduced the leased area from 8 hectares i.e. 20 acres to 1 acre 30 guntas + 1 acre 15 guntas totaling to 3 acres 5 guntas to (1) Sri K.Rachaiah and (2) M/s. Gowri Shankar Slab Polishing Industry through ADMG, Procd.No.1677/NLG/Q.97, dt.07-11-1997, even though no vacant land was left in Sy.No.115 after grant of land to KGPUL vide above mentioned G.O. The petitioner has further submitted that the said lease holders have approached the Hon'ble High Court of A.P. about the reduction of the leased area by filing WP.No.31701 and 31705/98 and the Hon'ble High Court dismissed the above two W.Ps., and confirmed the lease granted on 06-06-1999. Again the lease holders filed another two WPs., vide W.P. Nos.2669/2001 and 2666/2001 challenging the cancellation of the lease by the ADMG. The said WPs., have also been dismissed by the Hon'ble High Court on 25.04.2001.

11. *The petitioner has also submitted that during this period i.e. 29-07-1997 to 25-05-2001 the above lease holders were in physical possession of the said 8 hectares of land and committed illegal mining even after the leased area was reduced to 3 acres 5 guntas. The petitioner has submitted that they have made several complaints to the local police, officials, Revenue Department officials and Mines & Geology Dept., for preventing illegal quarrying of limestone in their project site, but the concerned authorities did not act upon the matter."*

Thereafter, the 4th Respondent issued show cause notice No.4346/ KGPU/ 2010, dated 02.02.2012 to petitioners. Hence, the writ petition.

5. Petitioners, at the outset, contend that having regard to the grant order and the attending circumstances, the petitioners are not under obligation to pay any amount to Respondents and the 4th Respondent without independently examining the issue of liability of seigniorage fee and examining the facts and circumstances by referring to the order of 1st Respondent dt.06.05.2010 issued show cause notice dated 02.02.2012. Therefore, the show cause notice, which is the off-shoot of the observations of 1st Respondent is required to be set aside and the observations in Order dt.06.05.2010 are to be considered and suitable directions are issued.

6. I have heard learned counsel and perused the material on record.

7. Admittedly, petitioners herein were not the parties before the Government in Revision filed by the 5th Respondent against demand dt.03.07.2006. The payment of seigniorage fee is dependant on the grant, period of grant, and the quantities extracted by a lessee from the mining lease granted by the authorities. In the case on hand, petitioners assert that they are not under obligation to pay seigniorage fee for the subject matter covered by the notice dated 02.02.2012. The apprehension voiced by petitioners is that in view of the observations recorded in Paragraphs 10 & 11 in the order dated 06-05-2010, the 4th

Respondent has no option except to proceed to decide the liability, but not whether the liability in fact arises or not.

8. I have carefully studied the observations in Paragraph 10 & 11 of the order dt. 06.05.2010 of the 1st Respondent and also the show cause notice dated 02.02.2012. This Court is of the view that the 1st Respondent was well within its jurisdiction to consider the grievance of 5th Respondent, vis-à-vis notices dated 18.03.2006 and 03.07.2006 and record findings on the case of 5th Respondent. In the process the 1st Respondent ought to have merely directed collection of seigniorage fee from persons responsible to pay in this behalf. Instead, the 1st Respondent directed recovery, as observed in Paragraphs 10 & 11 of the order dated 06.05.2010. This, in the considered view of this Court, is avoidable and violative of principles of natural justice as admittedly the petitioners were not heard by 1st respondent.

9. Having regard to the submissions of learned counsel, I am satisfied that the writ petition can be ordered as follows:

(a) The show cause notice dated 02.02.2012 is set aside, including the Demand notices dated 18.03.20106 and 03.07.2006; and matter remitted to R-4 for determination afresh.

(b) The operative portion in Paragraph-23 of the order dated 06.05.2010 is modified as follows:-

“The department has to raise demand notice against the persons liable to pay seigniorage fee as per grant order and determine the amount after giving reasonable opportunity to the persons responsible to pay the seigniorage fee. If the liability to pay or quantum is challenged, the challenge is independently considered from the records and decided.

(c) The matter is remitted to 4th Respondent to proceed in accordance with law against the persons, who are liable to pay seigniorage fee for the subject lease.

10. The writ petition is allowed as indicated above. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

February 22, 2017
Kv

S. V. BHATT, J



THE HON'BLE SRI JUSTICE S.V.BHATT



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Kv