HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.28026 of 2012

ORDER:

This Writ Petition is filed by the petitioner under Article 226 of the Constitution of India, for the following relief:

> "To declare the action of Respondents in not adjusting the excess amount paid in first year and directing to pay an amount of Rs.60,95,868/- towards second year lease period for quarrying sand in Chinnamandava Sand Reach, Khammam, for the period for which it is not renewed without clarifying as to the period is up to 31.03.2013 or period of one year from the date of passing of orders, as arbitrary and illegal."

The case of the petitioner is that he stood as the highest bidder for sand quarry operations for two years in the auction notification issued by the respondents, dated 03.12.2011. The work orders were issued to the petitioner on 28.12.2011. The petitioner deposited an amount of Rs.1,12,00,000/- for one year period i.e. 12 months. But, the quarry operation was done for three months i.e. from 28.12.2011 to 31.03.2012. The amount deposited towards first year is in excess of Rs.78,74,000/- and it is with the respondents. The sand quarry operations were stopped with effect from 01.04.2012 in view of the orders of the Division Bench of this Court in WP No.18822 of 2011 and 29487 of 2011. Against the same, the State Government preferred S.L.P. The Supreme Court, while issuing notice advised the State Government to apply to the Ministry of Environment and Forests (MoEF) for granting sanction for carrying on mining activities. The amount of the petitioner was lying with the department and the petitioner is not permitted to carry on the quarry operations from 01.04.2012. The State Government *vide* memo, dated 24.05.2012, condoned the delay for payment within the stipulated time for second year and directed the petitioner to obtain clearance from MoEF for conducting sand mining for second year.

The contention of the petitioner is that he was granted mining lease on a submergence area, and hence, there is no need to obtain clearance from MoEF, and that the same was certified by the Executive Engineer, Munyeru. On the basis of the report, the Assistant Director of Mines and Geology addressed a letter to the Director of Mines and Geology that he is in receipt of the reports from the Deputy Executive Engineer stating that the sand Reach falls 2.5 KMs towards up-stream side from the barrage and it is covering under the area to be submerged on completion of barrage, and requested to take necessary action. The petitioner further submits that as per the reports, the barrage has to be completed by 31.12.2012. The entire area would be submerged. The lease period as per the notification is from 28.12.2011 to 31.03.2013. Sand quarrying was stopped from 01.04.2012 and till date, no orders are issued for commencement of quarry operations. However, the Assistant Director of Mines & Geology has been insisting upon for payment of balance amount with 20% in excess by calculating the period as one year. As per the agreement, the lease period ends by 31-03-2013 and the amount deposited with the department is in excess, and insisting of further deposit by the petitioner does not arise. The petitioner further stated that if the period is treated as one year from the date of work order, he is ready and willing to deposit the amount demanded by the department, but till date, no decision is taken as to the clarification whether the period would be treated as one year from the date of work order issued by the Assistant Director of Mines & Geology for second year or it would end by 31.03.2013. Further, the petitioner was orally informed that if he does not deposit the balance amount, the amount already deposited by him would be forfeited.

The 4th respondent filed counter stating that this Court by order, dated 21.03.2012, restrained the respondents from giving any sand mining/sand quarrying lease to any person from 01.04.2012 onwards without taking permission of this Court. In the S.L.P. filed by the State Government, the Supreme Court while issuing notice advised that the department may apply to the MoEF for granting sanction for carrying on mining activities and directed the MoEF to consider the applications made by the lessees in accordance with law within a period of three weeks from the date of receipt of the application. It was further observed by the Supreme Court that the State Government is at liberty to receive the applications from the existing and prospective lessees who have applied for riverbed quarrying and in stream quarrying and forward them to MoEF for necessary permission in accordance with law and in the mean time, the 4th respondent issued demand notice, dated 17.04.2012, to the petitioner for doing sand quarrying outside the leased area and quantity arrived at 2,582 M3 for which penalty. The petitioner preferred a revision before the Government, and the 4th respondent also submitted his remarks and the said revision is pending before the authorities concerned. The lease is valid with effect from 28.11.2011 to 31.03.2013 and also subject to the condition that the lessee shall pay the knocked down amount among with 20% enhancement towards second year lease amount on or before 14.02.2012 to extend the leasehold rights from 01.04.2012 to 31.03.2013, and failing to do so, the leased period shall expire by 31.03.2012 and the Security Deposit gets forfeited to the Government.

The 5th respondent – Telangana State Mineral Development Corporation Limited was impleaded vide orders, dated 06.07.2017. The 5th respondent filed counter stating that this respondent was incorporated after bifurcation of the State and the petitioner impleaded the 5th respondent, after 5 years of filing this writ petition, which is totally mis-joinder, and further the District Level Sand Committee alleged to have resolved that the Telangana State Mineral Development Corporation will return amounts to the petitioner and take over the sand reaches, but the alleged resolution is without jurisdiction and that this respondent does not confer any right to the petitioner. As per the Telangana State Sand Mining Rules 2015, the Government is the competent authority to issue clarification, relaxation of orders and no other committee is empowered to fix the responsibility or clarification under the said Rules.

After perusal of the material available on record, and after hearing the arguments, this Court is of the view that since the petitioner is not allowed to proceed with the mining operations as per the agreement, he is entitled for return of the amount for the period for which the petitioner was prevented from mining the quarry as he already deposited the full amount for 12 months.

Learned counsel for the respondents submitted that the petitioner filed revision before the Government against the demand notice, dated 17.04.2012, issued by the Department and the same is pending before the authorities concerned.

In view of the above, if any orders are passed against the petitioner in the revision, the respondents are directed to deduct the said amount from the amount to be paid to the petitioner.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

RAJA ELANGO, J

September 18, 2017
KTL