

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.41341 of 2017

ORDER:

This writ petition is filed seeking verbatim the following relief/s:

‘...to issue direction or Order more in the nature of Writ of Mandamus declaring the Show-Notice No.6233/Illegal/2017 dated 20-11-2017 given by the Deputy Director of Mines and Geology, Warangal and the consequential Proceedings No.9645/R1-1/2016 dated 21-11-2017 of the Director of Mines & Geology, Hyderabad & the consequential Lr.No.2600/QP-5/WGL/2017 dated 21-11-2017, Lr.No.2875/QP-5/WGL/2017 dated 21-11-2017 and Lr.No.2876/QP-5/WGL/2017 dated 21-11-2017 of the Deputy Director of Mines and Geology, Warangal, as arbitrary, illegal, ultra vires, unjust, against principles of natural justice and unconstitutional and to set aside the same and pass such other order or orders.....’

I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Mines and Geology representing the respondents. I have perused the material record.

The case of the petitioner, in brief, is this: - “The petitioner holds a valid quarry lease over an extent of one hectare in S.Nos.305/A and 306/B of Ramavaram village. The said lease is valid upto 11.12.2033. The petitioner also applied for grant of quarry lease over an extent of 4.80 hectares of land in S.Nos.306/A, 320, 321 and 322 of the said Village. The petitioner earlier held lease over 1.619 hectares of land upto 14.12.2009. However, the petitioner did not apply for renewal of the said lease. Therefore, the petitioner applied for the quarry lease afresh. A quarry lease held by Ananta Granites is transferred in favour of Gayatri Granites Industries and that lease is in respect of 0.850 hectares of lease area in S.No.306/A/1 of the said village. The said lease transferred in favour of Gayatri Granites Industries is valid till 02.03.2033. While so, Assistant Director, Department of Mines & Geology [ADMG],

Jangaon/4th respondent, ADMG, Mahabubabad, and the Deputy Director, Mines and Geology [DDMG], Warangal/3rd respondent, with their staff inspected the afore-stated quarry leased areas, on 13.11.2017 and 14.11.2017, and surveyed the said leased areas by a different electronic survey method using electronic instrument-Garmin eTrex-10 in WGS-84 datum and alleged unauthorised operations in the applied area in S.No.306/A, 320, 321 & 322 and also in S.Nos.281 & 305 of Ramavaram village. Thereupon, DDMG gave impugned show cause notice, dated 20.11.2017, asking the petitioner to pay normal seigniorage fee with ten times penalty in a total sum of Rs.41,95,78,874/- alleging extraction of black granite of a quantity of 17602 M3. Pursuant to the impugned show cause notice, the Director, Mines and Geology/2nd respondent, *vide* his proceedings No.9645/R1-1/2016, dated 21.11.2017, on the recommendation of the DDMG, Warangal region, for prohibition of quarrying operations, prohibited quarrying operations, until further orders, in quarry lease for black granite held by the petitioner for the two quarry leases (i) 1.000 Ha in Sy.Nos.305/A, 306/B; and, (ii) 0.850 Ha in Sy.No.306/A/1; and, (iii) also in the applied area for an extent of 4.800 Ha in Sy.No.306/A, 320, 321 & 322 of Ramavaram Village, Kodakandla Mandal, Jangaon District. Aggrieved thereof, the present writ petition is filed.'

Learned counsel for the petitioner while reiterating the above chronology of events would further submit as follows: "In the joint survey and inspection report, the following conclusions and recommendations are recorded:

‘The quarry lease applicant M/s.Gayatri Granite is conducting quarry operations in the Quarry Lease applied area as well as in Sy.No.281 & 305 of Ramavaram (V), Kodakandla (M), Jangaon (D) without lawful authority, which attracts violation under Rule 26 of TSMMC Rules, 1966 for which the lessee is liable for payment of normal s.fee along with ten times penalty.

The lessee has not erected the boundary pillars as per the executed sketches for the both quarries.

In view of the above circumstances, the Director of Mines & Geology, Hyderabad may be issued prohibitory orders under rule 11(2)(a) of TSMMC Rules 1966 in order to stop the quarry operations in the adjacent quarry lease held by Gayatri Granites Industries in Sy.No.306A/1 over an extent of 0.850 Hectares of Ramavaram (V), Kodakandla (M), Jangaon District and also in the quarry lease applied area for black granite by M/s.Grayathri Granites, over an extent of 4.80 Hectares in Sy.No.306/A, 320, 321 and 322 of Ramavaram (V), Kodakandla (M), Jangaon District.’

The joint survey report is also signed by DDMG, on 15.11.2017. The said conclusions are not correct. However, after arriving at the said conclusions and with a pre determined decision, the impugned show cause notice was issued by the DDMG. It is well settled rule of law that any show cause notice with pre determined decision is bad in law and stands vitiated. Based on the joint survey and inspection report and on the recommendations of the DDMG, the Director of Mines and Geology issued consequential proceedings prohibiting quarry operations. Hence, the said consequential proceedings are also vitiated.”

Learned counsel for the petitioner, while *inter alia* stating that the petitioner is not canvassing on the merits of the matter, submitted that, even before issuing impugned show cause notice, the DDMG who issued the show cause notice has completely made up his mind and reached conclusions on the

subject matter of the show cause notice and, therefore, the entire proceedings initiated by the show cause notice are vitiated by unfairness and bias and the consequential proceedings of the Director of Mines and Geology also get vitiated as the subsequent proceedings pursuant to such a show cause notice, which was issued with pre determined mind, become an idle ceremony. The DDMG who was a party to the joint survey and inspection report and who signed the same and who has issued the impugned show cause notice proposing punitive action based on pre determined conclusions cannot deal with the matter with an open mind. In the circumstances, petitioner has a clear impression that he will not get an effective opportunity to rebut the allegations contained in the show cause notice and prove his case. In the stated facts and circumstances, the show cause notice is liable to be set aside as being vitiated and the consequential order of the Director prohibiting operations shall also be set aside as a sequel.

In support of the said contentions, he relied upon the decision in **Oryx Fisheries Private Limited v. Union of India and others** [(2010) 13 SCC 427] wherein the Supreme Court held that it is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and with an open mind while initiating a show cause proceeding and that show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice and that instead of telling him the charges if he is confronted with definite conclusions of his alleged guilt, the entire proceedings initiated by the show cause notice get vitiated by unfairness and bias and subsequent proceedings become an idle ceremony.

Learned Government Pleader would first bring to the notice of the Court that the petitioner has not challenged as of now the joint survey and inspection report, which was the result of the survey admittedly done in the presence of a representative of the petitioner. He would further submit that the notice impugned is only a show cause notice and that as per the instructions received by him, the petitioner sought extension of time by ten days for issuing a reply to the show cause notice and that without issuing a reply the writ petition is filed and since the challenge in the writ petition is only to a show cause notice, the writ petition is not maintainable, more particularly, when the joint survey and inspection report is not under challenge.

To a query from the court as to whether the ends of Justice would be met if instead of DDMG, the Director of Mines and Geology concerned is directed to take up the further proceedings and take a considered decision in the matter in accordance with procedure established by law and in an objective manner by receiving the explanation of the petitioner, learned counsel for the petitioner stated that the Director also issued the consequential proceedings, which are also impugned. He further submitted that under Section 35 of the AP Minor Mineral Concession Rules, 1966, against the orders of the Deputy Director, an appeal would lie to the Director and, therefore, if the Director is enjoined with the duty to deal further with the matter and the proceedings, the petitioner would be losing an opportunity of right of appeal.

Learned Government Pleader in reply and in response to the same query from the Court stated that the operative portion of the order of the Director only reflects that quarrying operations are prohibited until further orders for

gross violation and that he did not express any opinion on the merits of the matter and that, therefore, he is competent to deal with the matter directly in the event he is directed so to do. He would also submit that apart from the Deputy Director, Warangal region, there are two other Deputy Directors in the State.

I have given earnest consideration to the facts and submissions.

The only grievance eventually of the petitioner is that since the Deputy Director participated in the joint survey and inspection report held on 13th & 14th November, 2017, and signed the said report, which contains the conclusions, and later issued the impugned show cause notice, dated 20.11.2017, the Deputy Director is pre determined and has no open mind and since he has already drawn the conclusions the entire proceedings initiated by the impugned show cause notice get vitiated by unfairness and bias and, therefore, permitting him to hold further proceedings pursuant to the show cause notice will be only an idle ceremony, this Court is of the considered view that the duty of holding subsequent proceedings can be entrusted to the Director of Mines and Geology as he passed only a consequential order and in his orders he did not make any observation of his own, which reflect that he has already made up his mind and is pre-determined in the matter.

Dealing further with the contention that the Director is the appellate authority, this Court holds that he can be entrusted with the conduct of further proceedings pursuant to the show cause notice for arriving at a just decision in the matter considering the responsible position he holds in the department. Further, in the event the petitioner is aggrieved by any final order that may be

passed by the said authority, the petitioner would be entitled to invoke the writ jurisdiction of this Court and hence, no prejudice would be caused if the matter is entrusted to the Director as noted supra.

In the result, the Writ Petition is disposed of directing the petitioner to submit its representation to the impugned show cause notice to the Director, Mines and Geology, within three (03) weeks from the date of receipt of a copy of this order; on receiving such representation from the petitioner, the Director, Mines and Geology, that is, the 2nd respondent, shall forthwith proceed further in the matter and conduct further proceedings in strict accordance with the procedure established by law, if necessary, by affording an opportunity of personal hearing to the petitioner and take objectively a considered decision in the matter within three weeks from the date of the receipt of the representation of the petitioner and communicate the decision taken thereon to the petitioner within a week thereafter. It is trite to mention that till such exercise is completed, the consequential orders of the Director in Proceedings No.9645/R1-1/2016, dated 21.11.2017, shall remain in force. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

13.12.2017

Note: Issue CC by 14.12.2017

[B/o]

Vjl