

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.6975 of 2018

O R D E R:

Heard counsel for petitioner, the Government Pleader for Industries appearing for respondents 1, 5 & 6, Sri V.Prathap Reddy, Standing Counsel appearing for 2nd respondent and the Government Pleader for Revenue appearing for 4th respondent.

2. Petitioner was granted a sand lease in a sealed public auction conducted on 25.03.2011 for Sarapaka Sand Reach of Sarapaka Village, Burgampahad Mandal, Bhadradri Kothagudem District for the period 01.04.2012 to 31.03.2013. Petitioner paid a sum of Rs.1 Crore for the first year and Rs.1.20 Crores for the second year as per Rule 9-1(2) of AP Minor Mineral Concession Rules, 1966.

3. Petitioner was ordered to lift 2,33,640 cubic meters of sand in the second year lease period. He lifted 1,21,694 cubic meters in different spells and the balance of 1,11,946 cubic meters could not be lifted due to the changes in sand quarry policy by the Government.

4. Petitioner then gave a representation on 10.09.2014 stating that permitted quantity mentioned in the Ministry of Environment and Forests Clearance was still available and not lifted, that the said clearance was valid up to 30.11.2016,

that he had already paid Rs.60,00,000/- towards seigniorage fee and Rs.76,74,000/- towards bank guarantee and requested for grant of extension of time for sand quarrying operation to lift left over quantity referred to above.

5. Though initially permission was granted to the petitioner vide Memo dt.26.09.2014, the matter was reexamined after new Sand Rules were introduced vide G.O.Ms.No.3 dt.08.01.2015, under which sand allocation was made to the 2nd respondent.

6. Petitioner then made representations on 02.07.2016 and 25.03.2016 to the 2nd respondent through 3rd respondent for reimbursement of the advance seigniorage fee of Rs.50 lakhs paid in respect of quarrying the balance quantity of 1,11,946 cubic meters of sand. However, petitioner contends that the said amount has not been paid to the petitioner and that the State cannot unjustly enrich itself by retaining the said sum of money having not allowed the petitioner to lift the said quantity of sand on the ground that there is change in the policy.

7. The 2nd respondent filed a counter affidavit stating that it is not responsible for the refund of money, since the amount had never been paid to it.

8. The 6th respondent filed a counter affidavit on behalf of respondents 1, 4 & 5 taking the plea that the petitioner did

not approach the 6th respondent and that the 6th respondent is in correspondence with the 3rd respondent to decide whether or not petitioner is eligible to claim return of the amount paid for balance quantity of 1,11,946 cubic meters of sand allotted to the 2nd respondent. It is stated that the petitioner's claim for reimbursement of the said amount is pending with the 2nd respondent and if the 2nd respondent sends a report to the Government, the Government will then examine and pass orders.

9. This stand taken by the 6th respondent is clearly arbitrary.

10. Admittedly, the sum of Rs.50 lakhs was paid to the respondents 1, 5 & 6 towards advance seigniorage fee by the petitioner. The 2nd respondent had nothing to do with the payment as it never received it. Therefore, the 2nd respondent cannot have any say as to whether petitioner should get the refund of the said amount.

11. The respondents 1, 5 & 6 cannot retain the said money on the pretext that the 2nd respondent is to send a report to it, when the 2nd respondent has no role in the matter and when it is admitted in the counter affidavit filed by the 6th respondent that the petitioner could not lift 1,11,946 cubic meters due to change in sand quarry policy of the 1st respondent. So the retention of the said amount by the 1st

respondent is clearly illegal, arbitrary and violative of Articles 14 and 300A of the Constitution of India and amounts to unjust enrichment of the 1st respondent.

12. Therefore, the Writ Petition is allowed; the respondents are directed to refund the sum of Rs.50 lakhs paid by the petitioner towards advance seigniorage fee paid by him in respect of quarrying of balance quantity of 1,11,946 cubic meters of sand for Sarapaka Sand Reach of Sarapaka Village, Burgampahad Mandal, Bhadrachalam District, which has subsequently been allotted to the 2nd respondent, within a period of four (4) weeks from the date of receipt of a copy of this order. The 1st respondent shall also pay costs of Rs.5,000/- to the petitioner.

13. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

12th April, 2018.

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