

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.14713 of 2018

ORDER:

Petitioner is a society, consisting of the members belonging to Scheduled Tribes and is engaged in the business of decasting, transporting, dumping and reloading of the sand into the transport vehicles. The State Government entrusted the work of decasting of sand in Godavari River at Chenchupalli Village, Mangapet Mandal, Warangal District in favour of Telangana State Mineral Development Corporation (for short 'TSMDC') under the Telangana State Sand Mining Rules, 2014 notified vide G.O.Ms.No.3 Industries & Commerce (Mines.I) Department dated 8.1.2015. In order to carry out the said work, the TSMDC entered into an agreement dated 4.3.2016 with the petitioner. As per the said agreement, the quantity of sand to be extracted being 1,79,452 cubic metres in an area of 24.15 Hectares within the geo- coordinates indicated therein and the amount payable to the petitioner being Rs.220/- per cubic metre. According to the petitioner, they excavated 1,46,350.50 cubic metres.

2. On the complaint received from the Mines and Geology Department, alleging extraction of sand from the area outside the identified area and beyond the geo-coordinates, a joint inspection was conducted by the Assistant Director of Mines and Geology and TSMDC on 22.4.2016 and they submitted a report, stating that the extraction of sand took place beyond the geo-coordinates fixed by the authorities and a quantity of 98,991.50 M3 of sand was extracted from the area outside the specified sand bearing area and transported to the stockyard. The said report stated further that extraction of sand outside the specified sand bearing area would attract

penalty clause under Rule 5(1)(k) of TSSMR, 2015 and suggested to the TSMDC to obtain permission of the State Government to avoid penalty. The last three paragraphs of the said report read as under:

“The extraction of sand outside the specified sand bearing area will attract penalty clause under Rule 5(1)(k) of TSSMR, 2015 as per G.O.Ms.No.3 dated 8.1.2015 and subsequent amendments thereon.

Although the sand has been extracted outside the specified sand bearing area, and the sand so extracted stacked properly in the authorized stockyard only. No quantity of sand has been sold illegally in the open market. Out of the total quantity i.e. 98,991.50 CBM of sand extracted, the 28,997.50 CBM quantity of sand has been sold only through TSMDC online portal. The amount realized has been remitted to Government Treasury balance 70,000 CBM quantity of sand is available at the Stockyard. Therefore, there is no loss of revenue to Government.

Hence, M/s Telangana State Mineral Development Corporation Ltd., is requested to kindly take the permission from the Government to avoid the penalty on the quantity extracted outside the specific sand bearing area and also requested to obtain permission for sale of sand available at the stockyard being a Corporation undertaking by the State Government of Telangana”.

3. As a consequence of the above report, the Vice Chairman and Managing Director, TSMDC addressed a letter bearing Ref: TSMDC/GM(M)/WGL/2016/431 dated 10.8.2016 to the State Government requesting to allow TSMDC to sell available sand at Chenchupally stockyard i.e., 70,000 cubic metre by forfeiting raising cost of an amount of Rs.220/- per cubic metre to the petitioner society. Thereafter the State Government vide Lr.No.6294/M.I(1)/2016-1 dated 29.8.2016 allowed the request of the TSMDC to sell the available sand by forfeiting raising cost amount of Rs.220/- per cubic metre to the petitioner. The same was questioned in W.P.No.40469

of 2017 and this Court by way of an order dated 31.1.2018 disposed of the said writ petition and paragraphs 6 to 8 of the said order read as under:

“6. Even taken into consideration of the criteria laid down in the expression which clearly says a writ petition even in contractual and money claims is maintainable by every person. A sheer contractual recovery of the amount is not maintainable to consider though there is no absolute bar if at all the court considers as an exceptional case in other respects where there are serious disputed questions of fact which are of only complex nature may not entertain writ petition. Here, it is not such even to consider the case on hand comes under any of the limbs. It is, more particularly, for the reason that it is not the case of the respondents that the extraction of sand is in the absence of the persons concerned that the respondents under their monitoring and supervision it is only on their showing the extract can be done by the society in utilization of their hard labour for the extraction of sand as the case may be. If at all there is an excess excavation that too in their presence once it is not illegal but for exceeding the contractual limitations if any, that too, when not prevented timely and even by the impugned proceedings respondent No.1 permitted respondent No.3 to sell the sand already excavated and liability in it official on search through their official portal they cannot denied the service charges of excavation by the petitioner-society more particularly under the principle of quasi contract covered by sections 67 to 70 of the Indian Contract Act of the excavation is beyond the permissible limits of the contractual relation by such an irregularity, but for, at best to impose compensation for the act done by them as contemplated by Section 73 out of the remuneration payable to withhold a portion as compensation/penalty as the case may be.

7. Having regard to the above, from the settled principle on the scope of Sections 67 to 70 of the Indian Contract Act laid down by the expression of the Constitution Bench in the State of West Bengal v. B.K.Mondal and sons (AIR 1962 SC 779) of entitled to the amount under quasi contract invoking Section 70 of the Indian Contract Act, where the party has lawfully done some works not entertained to act gratuitously even if it is exceeding the same or outcome of irregularity and it is only, where the other party accepts the thing or enjoys the work done that liability under Section 70 of the Act definitely arise as they accepting extra excavated sand and want to reap the benefits for sale, they are

bound to pay for it subject to impose of any compensation out of the amount payable.

8. With the above observations, the Writ Petition is disposed of directing the respondents to pay the remuneration, subject to deduction of reasonable amount out of it as compensation”.

4. After the above said order, now the State Government passed an order vide Letter No.371/M.1(1)/2018-2 dated 19.4.2018, ordering deduction of fifty percent of amount i.e., Rs.77,00,000/- payable to the petitioner society by the TSMDC as penalty and to release the balance of Rs.77,00,000/-. This writ petition challenges the validity and legal sustainability of the said order. A counter affidavit is filed by the first respondent, denying the averments and allegations in the writ affidavit and in the direction of justifying the impugned action.

5. Heard Sri K.Durga Prasad, learned counsel for the petitioner and the learned Government Pleader for Mines and Geology for Respondents.

6. It is contended by the learned counsel for the petitioner that the questioned action which culminated in the order dated 19.4.2018 is highly illegal, arbitrary, unreasonable, without jurisdiction and violative of Article 14 of the Constitution of India; that as the entire activity was undertaken by the men of the petitioner society under the supervision and control of TSMDC, the petitioner, whose members belong to downtrodden and weaker sections of the society, cannot be penalised for no fault of them; that Rule 5 of the Rules notified vide G.O.Ms.No.3 Industries and Commerce (Mines-I) Department dated 8.1.2015 does not enable the State Government to impose penalty on the petitioner which has no privity of contract with the Government, as such, the impugned action is totally one without jurisdiction;

that when this Court directed the respondents in the earlier writ petition only to consider about the compensation under Section 73 of the Contract Act, there is no justification on the part of the Government to impose penalty.

7. Per contra, learned Advocates, appearing on behalf of State Government and TSMDC maintain that there is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India; that the impugned imposition of penalty is in accordance with Rule 5(1)(k) and 5(2) of the Rules notified vide G.O.Ms.No.3 dated 8.1.2015; that condition No.3 (iii) and condition No.8 of the agreement entered into between TSMDC and the petitioner enable the respondents to impose penalty.

8. It is significant to note that though the petitioner in the writ affidavit categorically stated that they undertook the entire activity under the supervision and control of the officials of TSMDC, the same is not denied in the counter affidavit filed on behalf of the respondents. Therefore, the same needs to be taken as correct. In fact, in the order in W.P.No.40469 of 2017, this Court at paragraph 6, this Court took note of the same and held that the petitioner cannot be denied the service charges for the excavation undertaken and also took note of the fact the permission granted by the State Government to TSMDC to sell the sand already excavated. In this context, it would be appropriate to refer to Rule 5 of the Rules notified vide G.O.Ms.No.3 dated 8.1.2015, which read as under:

“Responsibility of the M/ s Telangana State Mineral Development Corporation Ltd:

(1) Telangana State Mineral Development Corporation shall:

- (a) Enter into an agreement with Assistant Director of Mines and Geology by furnishing bank guarantee for an amount equivalent to 10% of the total seigniorage fee on assessed quantity as security deposit.
- (b) Extract sand as per the Approved Mining Plan and other conditions laid in the clearances issued under the River Conservancy Act, 1884, the Water Land and Trees Act, 2002 and the Environment Protection Act, 1986 and Air and Water and Pollution Prevention Act, 1974 and amendments thereon or any suitable subsequent Act/rules/amendments to be issued by Government from time to time.
- (c) No transfer of subletting of the allotted sand bearing area.
- (d) Extract and dispatch sand from the allotted sand bearing area to approved stockyard along with the way bill in Form-S2 issued by the Assistant Director of Mines and Geology concerned after paying the Seigniorage fee and other taxes as per the prevailing scheduled rate or revised from time to time.
- (e) (i) Establish a stockyard near to the lifting point having good road facilities and also additional stockyards near urban habitations, especially the Municipal Corporations.
- (ii) Shall obtain Mineral Dealer License for the stockyard under Mineral Dealer Rules, 2000 from the competent authority. The validity of Mineral Dealer License shall co-terminus with the period of agreement.
- (iii) If any sand stocks leftover after the period of agreement, on representation by the allottee, the validity of Mineral Dealer License may be extended by the Licensing Authority after report by the Assistant Director of Mines and Geology.
- (iv) The period of extension shall be based on verification of stocks and the previous daily dispatches.
- (f) Sand from stockyard shall be dispatched by Telangana State Mineral Development Corporation with transit pass (Form-E) issued by Assistant Director of Mines and Geology concerned along with the computerized weighment slip.
- (g) The dispatch of sand from the stockyard shall be under electronic surveillance and electronic documentation linked to a central documentation monitoring facility.

- (h) Use of machinery is permitted for making ramps, pathways and maintenance.
- (i) Extraction of sand from sand bearing area shall be by manual or mechanized means subject to permission from the District WALTA Authority on a condition that there is no impact on ground water table.
- (j) (i) Maintain daily production and dispatch register at the allotted sand bearing area.
 (ii) Maintain daily stock and dispatch register at the mineral dealer stockyard.
 (iii) Shall submit returns under A.P. Minor Mineral Concession Rules, 1966 and A.P. Mineral Dealer Rules, 2000 or any suitable subsequent rules/amendments to be issued by Government from time to time to the competent authorities.
- (k) Be penalized for any extraction of sand beyond the specified area; beyond the specified thickness and for any other violations.
 Penalty of Rs.1,00,000/- or Rs.500/- per cu.mt. of sand quarried beyond the specified limits or in excess of thickness stipulated, whichever is higher.
- (2) In the event of contravention of any of these rules and the conditions specified in Agreement of allotment during extraction of sand, the allotting authority shall after giving an opportunity, impose an appropriate penalty”.

9. The above said Rules obviously deals with the agreement between Assistant Director, Mines and Geology and TSMDC and the consequences of the breach of the conditions thereof and does not deal with the agreement between TSMDC and the petitioner. Therefore, it has to held that the impugned order, purportedly in exercise of the said Rule, is without jurisdiction. Another important aspect which needs mention is that in the earlier W.P.No.49469 of 2017, this Court deprecated the action of the Respondents in imposing penalty. On this ground also, the action of the

State Government in imposing penalty cannot be sustained. Even the TSMDC cannot sustain the action under Section 73 of the Contract Act read with conditions 3(iii) and 8 also in view of the joint report dated 25.4.2016 and letter dated 10.8.2016 of TSMDC stating that the Government did not suffer any revenue loss. In view of the above reasons, the impugned action cannot be sustained in the eye of law.

10. For the foregoing reasons, the writ petition is allowed, setting aside impugned Letter No.371/M.I(1)/2018-2 dated 19.4.2018 to the extent of ordering deduction of 50% i.e., Rs.77,00,000/-and consequently Respondents are directed to pay the entire amount to the petitioner without any deductions. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 4.9.2018
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A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.14713 of 2018



4.9.2018

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