

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.16801 of 2018

ORDER:

Non-issuance of dispatch permits to the petitioner by the Assistant Director of Mines and Geology/R.4 for transportation of Rough Stone and Road Metal from the quarry leased area, over an extent of 22.000 Hects., in Sy.No.50 of Bommalararamam village, Yadadri Mandal, Bhuvanagiri District, is under challenge in the present Writ Petition.

2. Heard Smt.N.Sobha, learned Counsel for the petitioner and the learned Government Pleader for Mines and Geology appearing for the respondents and perused the material available before the Court.

3. The Dy.Director of Mines and Geology, vide proceedings No.4023/Q-II(1)/2007, dated 06.09.2007, granted quarry lease in favour of the petitioner herein for the above mentioned extent and the said lease, as per the lease deed, is valid till 29.11.2022. Earlier, when the lease was determined by the Dy.Director of Mines and Geology, vide proceedings, dated 22.09.2016, on an appeal preferred by the petitioner, the Director of Mines and Geology, vide proceedings No.3031/Yadadri/AH/2017, dated 18.03.2017, had set aside the said order of determination. The complaint of the petitioner in the present Writ Petition, as advocated by the learned Counsel for the petitioner, is that despite the existence of the validly granted quarry lease in favour of the petitioner and inspite of paying the dead rent in advance, the Assistant Director of Mines and Geology is not issuing dispatch permits for transportation of mineral.

4. According to the learned Counsel for the petitioner, the impugned action on the part of the 4th respondent in not issuing the dispatch permits is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and is contrary to Rules 20 and 34 of the Telangana Minor Mineral Concession Rules, 1966 (hereinafter, referred to as 'the Rules'). It is further submitted by the learned Counsel that the position of law, as per the amended Rule, was not communicated to the petitioner by way of notice and the objections from the existing lessees should have been called for before carrying out the amendments.

5. While emphatically refuting the contentions of the learned Counsel, appearing for the petitioner, it is maintained by the learned Government Pleader that there is absolutely 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. Elaborating the said contention, it is submitted by the learned Government Pleader that in view of the failure on the part of the petitioner in adhering to the provisions of Rule 7 of the Rules, the action of the 4th respondent cannot be faulted.

6. In the above backdrop, now the issue which this Court is called upon to answer is:

“Whether, in the facts and circumstances of the case, the Assistant Director of Mines and Geology is justified in refusing to issue dispatch permits in favour of the petitioner?”

7. By way of G.O.Ms.No.37, Industries and Commerce (Mines-I) Department, dated 26.07.2016, and G.O.Ms.No.48, Industries and Commerce (Mines-I) Department, dated 26.07.2017, the State

Government notified certain amendments, carried out to the Rules. Rule 7 of the said Rules deals with *preparation of plans and demarcation of the leased area*. The amended Rule, which is germane and relevant for the purpose of resolving the issue on hand is Rule 7(B)(ii) of the said Rules which reads as under:-

“The quarry lease holders, commenced operations before commencement of these rules without Quarry Plan or feasibility report, shall submit a self certified Quarry Plan or feasibility report within six months from the date of commencement of these rules to the Deputy Director of Mines and Geology for its scrutiny.”

8. The above mentioned Rule, in clear and vivid terms, mandates and obligates the leaseholders to submit a self-certified Quarry Plan or feasibility report within six months from the date of advent of above said Rule to the Director of Mines and Geology. In the event of failure to do so, the Rule grants further time of six months for submission of the same along with an amount equivalent to one year dead rent as penal fee.

9. The above mentioned Rules came into force w.e.f. 26.07.2017 and admittedly, the petitioner submitted the draft quarry plan on 23.02.2018 i.e., after expiry of six months period, without being accompanied by one year dead rent as penal fee. The initial six months period came to an end on 25.01.2018 as per the above said Rule. The publication of the amended Rules on 26.07.2017 is not disputed by the petitioner. The contention that after getting the knowledge of the amended Rule, the petitioner submitted the quarry plan on 23.02.2018 and it should be construed as the submission within six months as mandated by the Rule can neither be approved nor countenanced as the date of

publication is required to be construed as knowledge to all including the petitioner. It is also significant to note, as stated in the counter, that in respect of other lease held by the petitioner in respect of the same survey number, the petitioner submitted self-certified draft quarry plan on 23.02.2018 by paying one year dead rent as penal fee of Rs.1,00,000/- in compliance of G.O.Ms.No.48, dated 26.07.2017. The contention that the State Government ought to have given notice to the petitioner, inviting objections on the amendments prior to publishing the Rules cannot be sustained. The right of the petitioner to get the dispatch permits and duty of the Assistant Director of Mines and Geology to issue the same as per Rules 20 and 34 of the Rules are always subject to fulfillment of other mandatory requirements of law and in the instant case, it is amended Rule 7(B)(ii) of the Rules.

10. In view of the above reasons, this Court does not find scintilla of hesitation to hold that there is absolutely no merits in the case of the petitioner. So long as the above said Rule continues to be in force, the petitioner is required to adhere to the same. In view of the same, the Writ Petition is dismissed. However, it is open for the petitioner to pay the above said penal fee within a period of six weeks from today. It is also made clear that the petitioner is at liberty to assail Rule 7(B)(ii) of the Rules, if the petitioner so advised to do.

Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date: 02.07.2018
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