

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

W.V.M.P.No.3991 of 2016 in/and W.P. No.16277 and 2016

And

W.V.M.P.No.4575 of 2016 in/and W.P.No.23329 of 2016

COMMON ORDER:

The petitioner in all these Writ Petitions is L.Dasthagiri Reddy.

2. Under proceedings No.4230/Q/99 dt.29-03-2000 issued by the Deputy Director of Mines and Geology, Kadapa District (3rd respondent), one S.Ravi Kumar was granted quarry lease of an extent of 1.215 hectares in Sy.No.1910 of Nandyalammmapeta Village, Mydukur Mandal, Kadapa District for 10 years and a lease deed was executed on 11-10-2000. Under the said lease, petitioner was permitted to conduct quarry operations in the leased land.

3. This quarry lease was terminated on 28-02-2010 by the 3rd respondent. According to petitioner, during the tenure of this lease, S.Ravi Kumar extracted and utilized 2,73,239.77 cu.m of stone and metal from the vertex of the hill from a height of 120 m in two different working pits measuring 50x30x12 m and 20x10x5 m on the ground surface.

4. Subsequently, petitioner was granted quarry lease over an extent of 4.149 hectares including the determined lease area having the above two different pits worked during the lease period of S.Ravi

Kumar vide proceedings No.2921/Q/KDP/2011 dt.16-11-2011 issued by 3rd respondent. At the time of grant of quarry lease petitioner contends that the inspection and survey was done, and the Surveyor working in the Office of the 4th respondent recorded the existence of the above referred two old pits also.

5. The petitioner contends that he was operating the quarry lease regularly and dispatching the material by obtaining dispatch permits issued by the Assistant Director of Mines and Geology, Kadapa (4th respondent) after paying of seigniorage fee in advance.

6. There was allegedly an inspection of the areas covered by the quarry lease by the technical staff attached to the Office of the 4th respondent between 16-09-2014 and 24-09-2014.

7. Alleging that in that inspection it was found that petitioner had excavated more mineral than was permitted from the leased land and had also done excavation of mineral in pits outside the leased area, a show cause notice No.2606/QL/2010 dt.09-10-2014 was issued by the 4th respondent to petitioner. In the show cause notice it was alleged that (i) 28,213 cu.m of stone metal was extracted in excess of the permits granted by the Department, (ii) that 912 cu.m of stone metal was extracted beyond the boundaries of the leased area and (iii) 33,148 cu.m. was taken illegally from the leased area of S.Ravi Kumar which had been cancelled.

8. Petitioner gave a detailed explanation refuting the said allegations contending inter alia that the 4th respondent had not furnished to him details about the pits measured in the sketch or how the quantities were arrived at; that he had only worked on the ground and developed worked pit where he was shown the land on the ground at the beginning of the grant of the lease and was being given dispatch permits; that the entire extracted road metal quantity was from his leased land of 4.149 hectares; and unfairly the quantity extracted by S.Ravi Kumar is attributed to petitioner.

9. Thereafter a demand notice-cum-order in proceedings No.2606/Q/2010 dt.26-12-2014 was passed by the 4th respondent. The 4th respondent rejected the defence of the petitioner by stating that the records furnished by petitioner did not indicate that the petitioner had quarried road metal and building stone from the leased land and dispatched it on the dates and times claimed by him and he did not say that the material was transported from his quarry. Therefore the petitioner was directed to pay Rs.1,89,09,900/- compromising of seignorage fee and penalty with in 15 days.

10. Petitioner then filed a Revision before the 1st respondent which was numbered as Memo No.1058/M.I(2)/2015-2.

11. On 10-02-2015, the demand notice-cum-order No.2606/Q/2010 dt.26-12-2014 of the 4th respondent was stayed by 1st respondent. The said order was vacated on 11-03-2015.

12. Petitioner then filed W.P.No.9714 of 2015 before this Court challenging the vacation of the stay order. That Writ Petition was allowed on 09-04-2015 and the stay which was earlier granted by the 1st respondent pending the Revision was directed to be continued till the disposal of the Revision.

13. Thereafter vide Memo No.1058/M.I(1)/2015-11 dt.22-04-2016, the 1st respondent dismissed the Revision filed by petitioner. After extracting the contentions raised in the Revision by the petitioner and the response of the 4th respondent thereto and without assigning any reasons indicating application of mind for rejecting the contentions of the petitioner, the 1st respondent cryptically concluded as under:

“22. The Revision Authority reviewed the case and on examination of the material available on record, the Revisional Authority has observed that the Revision Petitioner has excavated a quantity of 57,939 Cbms of Road Metal and Building Stone, after deducting of wastage from the leased area out of which a quantity of 29,727 Cbms was covered by permits, leaving a balance of 28,213 Cbms for which the Revision Authority has evaded the Seigniorage Fee.

23. He has also illegally excavated a quantity of 33,148 Cbms from the quarry lease of Sri N.Ravi Kumar, whose lease deed was already determined.

24. He has also excavated a quantity of 912 Cbms from outside the leased area illegally, without payment of Seigniorage Fee.

25. Hence, the Revisional Authority could find no illegality or irregularity in issuing the said Demand Notice. Hence, the Revisional Authority has decided to dismiss the Revision Petition. Accordingly, the Revision Petition is hereby dismissed. Interim orders if any passed earlier in this case stand vacated. The Revision

Petition is disposed off accordingly under Rule 35-A of APMMC Rules, 1966.”

14. Basing on the said order of the 1st respondent dismissing the Revision, the 4th respondent issued demand notice No.2606/Q/2000 dt.30-04-2016 directing the petitioner to pay Rs.1,89,09,900/- within 3 days.

15. Assailing the same, the petitioner filed W.P.No.16277 of 2016.

16. On 19-07-2016 in W.P.M.P.No.20065 of 2016 in W.P.No.16277 of 2016 recovery of the said amount was stayed by this Court on the ground that petitioner was not supplied with copy of the sketch on the basis of which it was determined by respondents that area beyond the mining lease area was worked by the petitioner and there was violation of natural justice.

17. To vacate this order, the respondents filed W.V.M.P.No.3991 of 2016.

18. On the ground that the petitioner did not pay the amount demanded vide notice dt.30-04-2016, the 3rd respondent determined the quarry lease of the petitioner over an extent of 4.623 hectares vide proceedings No.3304/QL-KDP/2015 dt.15-06-2016.

19. This is questioned by the petitioner in W.P.No.23329 of 2016.

20. On 09-07-2016, in W.P.M.P.No.28732 of 2016 in W.P.No.23329 of 2016, this order dt.15-06-2016 of the 3rd respondent was suspended by this Court.

21. W.V.M.P.No.4575 of 2016 is filed by respondents to vacate the said order.

22. Learned counsel for petitioner contends that the gross volume of the pits existing in the leased area is 1,01,827.100 M³; the gross volume of the two already existing pits recorded at the time of grant is 47,900 M³ ; the volume of material actually extracted by the petitioner is 53,927 M³; that feasible mineral useful for crushing in metal crusher is 32,356 M³; that the quantity consumed in Government works is 34,006 M³ (16648.65 M³ + 173.56 M³); and therefore the petitioner did not undertake in any illegal excavation and evaded seigniorage fee to the Government.

23. It is further contended that the Municipal Commissioner, Mydukuru Municipality, Mandal Parishad Development Officer, Mydukuru, Mandal Parishad Development Officer, Khazipet issued confirming letters in respect of consumption of material and recovery of seigniorage fee; that as per G.O.Ms.No.23, Irrigation & CAD Department, dated 05-03-1999, the contractors executing the Government works are permitted to procure material without producing proof for payment of seigniorage fee; and the seigniorage fee on the minor minerals consumed in the Government works will be

recovered from the final bills of the contractor; and so the petitioner has not extracted 28,213 M³ without payment of seigniorage fee to the Government as alleged by respondent.

24. It is next contended that as per the statement given by the Deputy Executive Engineer (R&B) Sub-Division, Proddatur South showing the particulars of material utilized by S.Ravi Kumar, Proprietor, SRK Constructions, the material used in Government works was shown as 273239.677 M³ during the tenure of the lease and the seigniorage fee on the total material was recovered from the above Company; and therefore the demand notice issued to the petitioner on the quantity of 61272 M³ against the survey reports submitted by the Surveyor as per the pit generated by S.Ravi Kumar is irregular.

25. It is also contended that the 4th respondent did not mention any grounds for including 912 M³ to the account of the petitioner; that the 4th respondent issued the demand notice No.2606/Q/2010 dt.26-12-2014 without proper verification of records and the same is illegal.

26. It is further contended that the 1st respondent has not considered the grounds raised by the petitioner and has not considered the fact that already pits were existing in the leased area in the same survey number; that the Technical staff of the Office of the 4th respondent including the Surveyor has measured the pits in the entire survey number which was already dug by S.Ravi Kumar; without considering the above aspects and without considering the instructions/guidelines

issued by the Government, the 4th respondent imposed penalty against the petitioner vide demand notice dt.26-12-2014.

27. It is therefore contended that the demand notice No.2606/Q/2010 dt.26-12-2014 issued by the 4th respondent and the orders issued by 1st respondent through Memo No.1058/MI(1)/2015-11 dt.22-04-2016 and the Notice No.2606/Q/2010 dt.30-04-2016 issued by the 4th respondent are wholly illegal, arbitrary, violative of Article 14 of the Constitution of India apart from being violative of provisions of the A.P. Minor Mineral Concession Rules, 1966 and also in gross violation of principles of natural justice.

28. Learned Government Pleader for Industries on the other hand refuted the above contentions and referred to the contents of the impugned proceedings in support of his contentions.

29. I have noted the contentions of both sides.

30. In my opinion, the 4th respondent while passing the demand notice-cum-order in proceedings No.2606/Q/2010 dt.26-12-2014 did not consider all the contentions raised by the petitioner. In particular, the petitioner's plea that he was not furnished details about the pits measured in the sketch or how the quantities were arrived at was not referred to or considered.

31. Even the 1st respondent, while rejecting the Revision filed by the petitioner in Memo No.1058/M.I(1)/2015-11 dt.22-04-2016, did not

give any reasons for rejecting the contentions of the petitioner and simply extracted the grounds of the petitioner and the response thereto by the 4th respondent. There is no evidence of application of mind to the contentions of the parties and paras-22 to 25 of his order referred to above do not contain any reasons.

32. The Supreme Court in **S.N. Mukherji Vs. Union of India**¹ held:

“34. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.”

33. Since such reasons have not been recorded in 1st respondent's order dt.22-04-2016, it cannot be sustained and has to be held to be arbitrary and passed without application of mind.

¹ AIR 1990 SC 1984

34. So the order dt.22-04-2016 passed by the 1st respondent, the consequent demand notice dt.30-04-2016 of 4th respondent and the order dt.15-06-2016 passed by 3rd respondent terminating the lease granted to the petitioner cannot be sustained. They are accordingly set aside.

35. Learned counsel for petitioner also contended that the Tahsildar, Mydukur Mandal had issued endorsement dt.12-05-2016 under the Right to Information Act, 2005 that no Revenue Department Official had participated in any survey or inspection done by the Officials of the Mining Department between 16-04-2014 and 24-09-2014 and that the Revenue officials were not invited to participate in the said survey and inspection.

36. This is not denied by the learned Government Pleader for Industries.

37. It is important that the Revenue Officials who know survey are also to be involved in the survey so that there is no difficulty about identifying the leased land and deciding whether the petitioner quarried within the leased area or outside it.

38. For the aforesaid reasons,

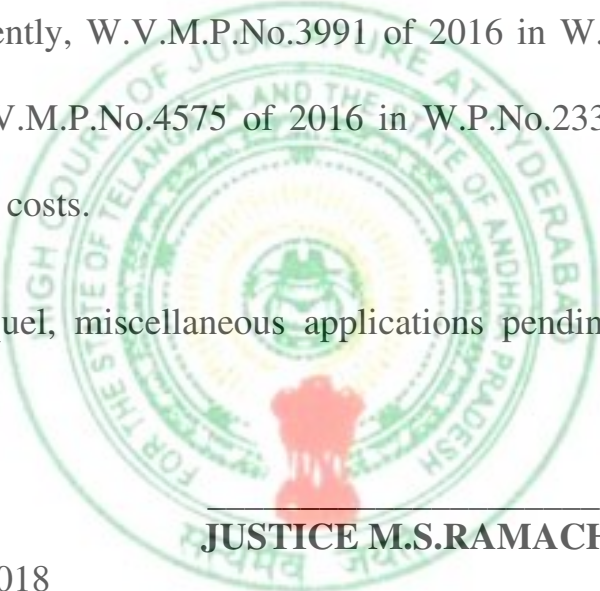
- (i) Both the Writ petitions are allowed;
- (ii) demand notice-cum-order in Proc.No.2606/QL/2010 dt.26-12-2014 of 4th respondent is set aside;

- (iii) Memo Nos.1058/MI(1)/2015-11 dt.22-04-2016 of 1st respondent is set aside;
- (iv) Proc.No.3304/QL-KDP/2015 dt.15-6-2016 of 3rd respondent is set aside;
- (v) the matter is remitted back to the 4th respondent to cause a survey to be done of the land leased to the petitioner *and* the land where it is alleged that petitioner was doing quarry operations to decide *whether the petitioner was doing quarry operations in the area leased*, by giving prior notice of the said survey to the petitioner and by involving the Officials knowing survey who are attached to the Revenue Department as well as Mines Department;
- (vi) and such survey shall be completed within two (02) months from the date of receipt of copy of this order and copy thereof be furnished to petitioner;
- (vii) the petitioner is entitled to file fresh explanation on the basis of the results of said survey;
- (viii) a fresh reasoned order shall be passed by the 4th respondent after considering the report of the survey as well as fresh explanation of the petitioner to the said survey within three (03) months from the completion of the survey and the same shall be communicated to the petitioner.

- (ix) Any payments made in regard to the demand notice issued by respondents till date pursuant to the impugned orders/notices (which are now set aside) shall abide by the result of fresh orders, which shall be passed by 4th respondent; and
- (x) pending passing of fresh orders by 4th respondent as directed above, the subject land shall not be leased to third parties by respondents.

39. Consequently, W.V.M.P.No.3991 of 2016 in W.P. No.16277 of 2016 and W.V.M.P.No.4575 of 2016 in W.P.No.23329 of 2016 are dismissed. No costs.

40. As a sequel, miscellaneous applications pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 17-09-2018

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