

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

WRIT PETITION No.23087 of 2018

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Mines & Geology, appearing for the respondents, apart from perusing the material on record.

In the present Writ Petition, challenge is to the action of the Union of India-first respondent herein in passing Final Order No.20/2015, dated 04.03.2015, on a revision filed by the petitioner herein against the order of determination passed by the State Government.

Petitioner herein was granted mining lease for Mica, Quartz and Feldspar over an extent of Ac.39.52 in Sy.No.327/P of Degapudi village, Podalakur Mandal, S.P.S.R.Nellore District and the same was renewed by the State Government for a further period of twenty years vide G.O.Ms.No.67, Industries & Commerce Department, dated 04.03.2015. By way of G.O.Ms.No.127, dated 17.11.2014, the State Government declared the said lease as lapsed, under Rule 28 (1) of the Minor Mineral Concession Rules, 1960 (for brevity, 'the Rules'), on the ground that the petitioner herein failed to fulfil the conditions of the lease.

Aggrieved by the said order, petitioner herein preferred a statutory revision, under Rule 54 of the Rules in Form-N, dated

12.02.2015, and the same was received by the first respondent on 18.02.2015. By way of the impugned order, on the ground that the first respondent declared the subject minerals as minor minerals with effect from 10.02.2015, the first respondent-revisional authority endorsed the file to the State Government to decide on the admissibility of the case, under Section 15 of the Mines and Minerals (Development & Regulation) Act, 1957 (for brevity, 'the Act'). This Writ Petition challenges the validity and legal sustainability of the order passed by the Union of India-first respondent herein.

Learned counsel for the petitioner attacks the above said action by contending that, in view of the provisions of Section 6 of the General Clauses Act, 1897, the first respondent out not to have resorted to the impugned action and should have decided the revision on merits and ought to have passed the orders.

Per contra, it is vehemently contended on behalf of the respondents that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and, in the absence of the same, the impugned action is not amenable for any judicial review, under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that, though the State Government passed the order on 17.11.2014, under Rule 28 (1) of the Rules, as on the date of filing the revision by the petitioner herein on 12.02.2015 before the first respondent herein, the first respondent, by way of a notification declared the subject minerals also as minor

minerals and as such the Union of India-first respondent ceased to have power to exercise revision under Rule 54 of the Rules.

In the above background, now the issue that merits for consideration of this Court is: “Whether the Union of India-first respondent herein is justified in endorsing the revision to the State Government, without deciding the same on merits, under Rule 54 of the Rules, and whether the petitioner is entitled for any relief from this Court, under Article 226 of the Constitution of India?.

Subsequent to the amendments carried out to the Act by the Parliament, with effect from 12.01.2015, the Union of India issued a gazette notification bearing GSR.No.423 (E), dated 10.02.2015, declaring as many as 31 minerals as minor minerals by deleting the same from the schedule of major minerals. This aspect is not in controversy. Now, obviously on the ground that the subject minerals are minor minerals, the Union of India declined to adjudicate the revision, admittedly, and endorsed the revision to the State Government. It is not in controversy that on the date of order of the State Government i.e. 17.11.2014, the subject minerals were major minerals and they became minor minerals in terms of the above said notification, dated 10.02.2015. In this context, it would be highly essential and relevant to refer to Section 6 of the General Clauses Act, 1897, which reads as under:

*“Section 6: **Effect of repeal**-Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment*

hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed”.

In view of the clear language employed by the Parliament in the above provision of law, since the State Government passed the order on 17.11.2014, in the considered opinion of this Court, the Union of India continues to have the power of revision under Rule 54 of the Rules. The aggrieved party cannot be made remediless.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned Final Order No.20/2015, dated 04.03.2015, passed by the first respondent-revisional authority and the revision, filed by the petitioner herein before the first respondent, stands restored to file and it is open for the petitioner herein to file another set of revision, before the Union of India for fresh consideration on merits, in accordance with law and as per the observations made

supra, within a period of one month from today, and the first respondent shall pass orders within a period of four months thereafter. There shall be no order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

A.V. SESA SAI, J

23rd July, 2018
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