

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

W.V.M.P.No.4017 of 2016 in/and W.P. No.16274 and 2016

And

W.V.M.P.No.4124 of 2016 in/and W.P.No.23438 of 2016

And

W.V.M.P.No.4007 of 2016 in/and W.P. No.16272 and 2016

And

W.V.M.P.No.4618 of 2016 in/and W.P.No.23280 of 2016

COMMON ORDER:

The petitioner in all these Writ Petitions is K.Purushottam Reddy.

2. Under proceedings No.60/Q/KDP/2010 dt.15-01-2010 issued by the Deputy Director of Mines and Geology, Kadapa District (3rd respondent), he was granted lease of an extent of 0.809 hectares in Sy.No.1910 of Nandyalammipeta Village, Mydukur Mandal, Kadapa District for 10 years and a lease deed was executed on 04-02-2010 (for short 'Lease I').

3. Another extent of 0.578 hectares in the same survey number of same village was also granted to petitioner for 10 years through proceedings No.62/Q/KDP/2010 dt.15-01-2010 of the 3rd respondent and lease deed in respect thereof was executed on 04-02-2010 (for short 'Lease-II').

4. The petitioner contends that he was operating the quarry leases 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.

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

6. Alleging that leased areas were not being worked by the petitioner, two show-cause notices bearing No.572/QL/2009 dt.09-10-2014 and proceedings No.487/QL/2009 dt.09-10-2014 were issued by the 4th respondent calling explanation from the petitioner in respect of both leases.

7. Petitioner submitted detailed explanations to the above show cause notices on 22-10-2014 denying the allegations leveled against him.

8. Thereafter Demand Notice- cum- order in Ref. No.572/Q/2000 dt.26-12-2014 was issued by the 4th respondent in respect of Lease I. It is stated in the said order that on the date of inspection, the office staff of the 4th respondent found that the petitioner was not doing any work within the boundaries of the area leased to him as mentioned in the sketch annexed to the lease deed; and therefore the explanation of the petitioner that he was doing quarrying in the area which was leased to him and was carrying on quarrying work within the

boundaries of the land leased to him by the Government by paying advance seigniorage fee, was rejected. It is also stated therein that he had misused the dispatch permits and had extracted 17,780 cu.m. outside the leased area, for which he is liable to pay seigniorage fee + 5 times penalty amounting to Rs.53,34,0000/- He was directed to pay the said amount within 15 days and it was stated that if not, steps would be taken to recover the said amount from him.

9. Even in respect of Lease-II, another Demand Notice- cum- order in Ref. No.487/Q/2000 dt.26-12-2014 was passed by the 4th respondent giving same reasons. It is stated therein that he had extracted 36,177 cu.m. outside the leased area, for which he is liable to pay seigniorage fee + 10 times penalty amounting to Rs.1,98,97,350/-. Further it is alleged that he misused the dispatch permits for extent of 16,029 cu.m for which he is liable to pay seigniorage fee + 5 times penalty of Rs.48,08,700/-.

10. Challenging the above two demand notices, the petitioner filed on 22-01-2015 two separate Revisions before the Principal Secretary, Industries and Commerce (Mines.I) Department, State of Andhra Pradesh, Hyderabad (1st respondent). These were numbered as Memo.No.1060/M.I(1)/2015-8 and Memo.No.1059/M.I(1)/2015-12 respectively.

11. Initially, the 1st respondent stayed both the demand notices.

Re: Lease-I

12. In regard to Lease-I, the Revision filed by petitioner was dismissed by 1st respondent in Memo.No.1060/M.I(1)/2015-8 dt.22-04-2016.

13. After dismissal of the said Revision, the 4th respondent issued demand notice in proceedings No.572/Q/2009 dt.30-04-2016 asking the petitioner to pay Rs.53,34,000/- within three (03) days.

14. The order dt.22-04-2016 of the 1st respondent and the demand notice dt.30-04-2016 of the 4th respondent are questioned by the petitioner in W.P.No.16274 of 2016.

15. On 19-07-2016, in W.P.M.P.No.20062 of 2016 in W.P.No.16274 of 2016, this Court passed the following order:

“Since the impugned memo dt.22-04-2016 of 1st respondent as well as the other proceedings impugned in this Writ Petition have been passed by respondents without supplying a copy of sketch to petitioner on the basis of which it was determined by respondents that area beyond the mining lease area was worked by petitioner, there is prima facie gross violation of principles of natural justice.

Therefore, there shall be stay of recovery of amounts demanded from the petitioner in the said proceedings under further orders.”

16. W.V.M.P.No.4017 of 2016 is filed to vacate the said order.

17. Later, on the ground that the petitioner did not pay the said amount, the proceedings no.3303/QL-KDP/2015 dt.15-06-2016 were

issued by the 3rd respondent stating that the 4th respondent had informed that the petitioner did not pay the sum of Rs.53,34,000/-, that the 4th respondent recommended determination of the quarry lease granted to the petitioner in the said land, and therefore the quarry lease for this extent is also determined invoking Rule 31(xvi) of the A.P Minor Mineral Concession Rules, 1966 (for short “the Rules”). This was challenged by the petitioner in W.P.No.23438 of 2016.

18. On 19-07-2016, in W.P.M.P.No.28874 of 2016 in W.P.No.23438 of 2016, this Court passed the following order:

“Having regard to the fact that the Memo dt.22-04-2016 issued by the 1st respondent has been suspended in W.P.No.16274 of 2016 and since the order impugned in this Writ Petition is a consequence to the said order dt.22-04-2016 passed by 1st respondent, there shall be interim suspension as prayed for.”

19. W.V.M.P.No.4124 of 2016 is filed to vacate the said order.

Re: Lease-II

20. In regard to Lease-II, the stay of proceedings which was granted on 13-02-2015 by 1st respondent was vacated on 10-03-2015.

21. So the petitioner filed W.P.No.9306 of 2015 before this Court, which set aside on 09-04-2015, the order dt.10-03-2015 and held that the stay granted in the Revision would continue till disposal of the Revision.

22. The 1st respondent subsequently dismissed the Revision vide Memo no.1059/M.I91)/2015-12 on 22-04-2016.

23. Thereafter a demand notice was issued in proceedings No.487/Q/2009 dt.30-04-2016 demanding an amount of Rs.2,47,06,050/- from the petitioner within three (03) days.

24. Both the order in Memo no.1059/M.I91)/2015-12 on 22-04-2016 dt.22-04-2016 of the 1st respondent dismissing the Revision and the demand notice in proceedings No.487/Q/2009 dt.30-4-2016 issued by 4th respondent are questioned by petitioner in W.P.No.16272 of 2016.

25. On 19-07-2016, in W.P.M.P.No.20060 of 2016 in W.P.No.16272 of 2016, this Court passed the following order:

“Since the impugned memo dt.22-04-2016 of 1st respondent as well as the other proceedings impugned in this Writ Petition have been passed by respondents without supplying a copy of sketch to petitioner on the basis of which it was determined by respondents that area beyond the mining lease area was worked by petitioner, there is prima facie gross violation of principles of natural justice.

Therefore, there shall be stay of recovery of amounts demanded from the petitioner in the said proceedings under further orders.”

26. W.V.M.P.No.4007 of 2016 is filed to vacate the said order.

27. Since the petitioner did not pay the amount demanded in the notice dt.30-4-2016, the 4th respondent requested the 3rd respondent to

determine the quarry lease of the petitioner, and as per the said recommendation, the 3rd respondent determined the lease invoking Rule 31(xvi) of the Rules by order in Proc.No.3305/QL-KDP/2015 dt.15.6.2016. This was questioned by the petitioner in W.P.No.23280 of 2016.

28. On 19-07-2016, in W.P.M.P.No.28668 of 2016 in W.P.No.23280 of 2016, this Court passed the following order:

“Having regard to the fact that the Memo dt.22-04-2016 issued by the 1st respondent has been suspended in W.P.No.16272 of 2016 and since the order impugned in this Writ Petition is a consequence to the said order dt.22-04-2016 passed by 1st respondent, there shall be interim suspension as prayed for.”

29. W.V.M.P.No.4618 of 2016 is filed to vacate the said order.

THE CONTENTIONS OF COUNSEL FOR PETITIONER

30. Learned counsel for petitioner contended that the separate orders dt.22-04-2016 of the 1st respondent rejecting the Revisions filed by petitioner, the demand notices dt.30-04-2016 issued by the 4th respondent and the orders dt.15-06-2016 passed by 3rd respondent determining the leases are contrary to law, arbitrary and violative of Article 14 of the Constitution of India and the Rules apart from being violative of principles of natural justice.

31. He contended that quarry leases were granted to the petitioner after conducting a survey and inspection by the Surveyor and Technical staff of the Office of the 4th respondent; boundaries of the

area considered for grant were fixed and the area was demarcated on the ground; that the Surveyor has to prepare a map indicating the boundaries, linear measurements with reference to permanent reference points and survey stones; under Rule 7 of the Rules, it is mandatory to get a sketch prepared and enclosed to the lease deed indicating the demised piece of land at the time of execution of the lease deeds; that the preparation of the sketch with reference to the surveyed area is the responsibility of the surveyor and the lessees are not responsible for any error noticed at a later date; that the Technical staff inspected the leased area and the material extracted from the working area several times before recommending the issue of dispatch permits for transportation of the mineral extracted from the leased areas and based on the same, dispatch permits had been issued by the 4th respondent. He contended that the Surveyor, who surveyed the area on ground *and* the persons, who undertook the inspection on 16-09-2014 were not one and the same; the 4th respondent did not get any map prepared by the inspecting Officials indicating the Geo Co-ordinates and linear measurements of the area under operation *and* the Geo Co-ordinates and linear measurements of the area granted with reference to permanent reference points and the survey stones to establish the error; and if any error is noticed with reference to the land demarcated on the ground and the sketch prepared by the Surveyor, the Department has to clarify the matter with the Surveyor

only, since the lessee had no role in survey and demarcation and preparation of the sketch.

32. Relying on Memo No.9911/MII(1)/2012-1 dt.01-11-2012 issued by the State Government on demarcation of leased area without permanent reference points, he contended that as per the guidelines contained in the Memo, the affected lease holders have to file quarry lease applications over the area where they are presently operating the quarry over the extent without reference to the executed sketch, and respondent Nos.3 and 4 should process the applications as per Rules; and in case of pending priority applications, the 3rd respondent should grant the quarry lease to the occupier by overlooking priority with prior approval of the Government under Rule 12(3) of the Rules.

33. He contended that the decision of the 4th respondent to treat the operations as illegal extractions in violation of the above instructions, cannot be sustained.

34. He further pointed out that the explanations dt.22-10-2014 given by the petitioner to the 4th respondent and in particular clauses 8 and 9 thereof extracted below, were not considered by 4th respondent:

“8. In this connection I have submitted that the ADM&G has not furnished to me about the pits measured in the sketch and not taken any consent from me even though the survey and inspection is carried in presence of our representative.

9. Hence I have not having any scope to submit our reply that the pits measured by the department staff and how does the quantities arrived and construed that as we have extracted illegally without furnishing details of sketch. In the said notice the details are not in full shape to submit by grievance. As the survey number is so much large extent, and having old workings, the road metal quarried from all the pits quarried by me in question and same is attributed to me is injustice.”

35. A further contention was raised that the said survey was done only in the presence of watchman/Security Guard of the petitioner, who had no knowledge of the method of survey; that the petitioner should have been given notice appropriately informing about such survey; and respondents cannot rely on the survey and inspection done on 16-09-2014.

36. Learned counsel for petitioner also pointed out that in the inspection report, there is a reference to only 15,382 cu. m in respect of Lease-II (0.578 hectares in Sy.No.1910), but in the demand notice cum order no.487/Q/2009 dt.26-12-2014 issued by 4th respondent, a further quantum of 20,795 cu. m was added as illegally extracted mineral, which in fact is alleged to have been illegally extracted by one L.Dastagiri Reddy, a lessee of another parcel of land in Sy.No.1910 in the same inspection report.

CONTENTIONS OF THE GOVERNMENT PLEADER FOR INDUSTRIES

37. The Government Pleader for Industries appearing for the respondents supported the orders/proceedings impugned in the Writ petitions and contended that no illegality was committed by

respondents. Elaborate counter affidavits/ vacate stay applications reiterating the reasoning in the impugned orders have been filed.

THE CONSIDERATION BY THE COURT

38. Firstly, the learned Government Pleader for Industries was unable to explain how 20,795/- cu. m found to be allegedly illegally extracted by L.Dastagiri Reddy in the inspection report is treated as illegally extracted mineral by the petitioner and included in total of 36,177 cu.m, for which a sum of Rs.1,98,97,350/- is demanded from the petitioner in the order No.487/Q/2009 dt.26-12-2014 issued by 4th respondent for Lease-II.

39. Secondly the orders dt.26-12-2014 passed by the 4th respondent, do not indicate that the contentions raised in the explanations dt. 22-10-2014 given by petitioner to the show cause notices dt.09-10-2014 have been properly considered. In particular, the following objections of the petitioner were not answered.

“(i) the 4th respondent has not furnished to petitioner information about the pits measured in the sketch or how the quantities are arrived at for alleged illegally extracted mineral;

(ii) that the survey number contains large extent and has old workings, road metal quarried from all pits is attributed to petitioner ;

(iii) attributing to petitioner illegal extraction of mineral of 20,795 cu.m by L.Dastagiri Reddy is wrong.”

40. Thirdly, a perusal of the orders dt.22-04-2016 passed by the 1st respondent dismissing the Revision petitions filed by petitioner in

respect of both the leases refers to the contentions of the petitioner and the remarks of the 4th respondent thereon in the form of a table. The 1st respondent, however, cryptically observes in the order passed by him in regard to lease-I, in para-16 as:

“16. 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 evaded the Seigniorage Fee for a quantity of 17,780 Cbms of Road Metal and Building Stone and hence, the ADM&G, Kadapa issued Demand Notice dt.26-12-2014 by invoking Rule 26(2) and 34(1) of the APMMC Rules, 1966. 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 of accordingly under Rule 35-A of APMMC Rules, 1966.”

41. Again with regard to Lease-II, he merely states as under:

“21. 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 illegally excavated a quantity of 369177 Cbms of Road Metal and Building Stone, from outside the leased area and he has evaded the Seigniorage Fee for a quantity of 16029 Cbms. Hence, the Revision Applicant was issued a Demand Notice to pay Rs.2,47,06,050/- under Rule 26(2) & 34(1) of the APMMC Rules, 1966.

22. The contention of the Revision Applicant that he has conducted quarry operations within the area granted on lease, is not correct as per the report of the ADM&G, Kadapa. It is also observed that the Revision Applicant has obtained permits for a

quantity of 16029 Cbms of Road Metal and the same were utilized for the mineral excavated from outside the leased area by violating the Rules.”

42. So there is no independent application of mind by the Revisional authority to the contentions of the petitioner as well as those of the 4th respondent and no reasons for rejecting petitioner’s grounds of revision are assigned.

43. It is indeed unfortunate that while confirming the demands of Rs.2,47,06,050/- and Rs.53,34,000/- raised by 4th respondent through orders dt.26-12-2014 on the petitioner i.e. for more than Rs.3 crores, the 1st respondent has not chosen to give reasons of even 3 lines.

44. 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

¹ AIR 1990 SC 1984

policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.”

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

46. So the orders dt.22-04-2016 passed by the 1st respondent, the consequent demand notices dt.30-04-2016 of 4th respondent and the orders dt.15-06-2016 passed by 3rd respondent terminating the leases granted to the petitioners cannot be sustained. They are accordingly set aside.

47. 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.

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

49. 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.

50. For the aforesaid reasons,

- (i) all the Writ petitions are allowed;
- (ii) demand notice-cum-order in Proc.No.572/QL/2009 dt.26-12-2014 and demand notice-cum-order in Proc.No.487/QL /2009 dt.26-12-2014 of 4th respondent are set aside;
- (iii) Memo Nos.1060/MI(1)/2015-8 dt.22-04-2016 and Memo Nos.1059/MI(1)/2015-4 dt.22-04-2016 of 1st respondent are set aside;
- (iv) Proc.No.3303/QL-KDP/2015 dt.15-6-2016 and Proc.No.3305/QL-KDP/2015 dt.15-6-2016 of 3rd respondent are 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 explanations 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 explanations of the petitioner to the said survey within three (03) months from the completion of the survey and he shall communicate them to the petitioner.
- (ix) Any payments made in regard to the demand notices 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 lands shall not be leased to third parties by respondents.

51. Consequently, W.V.M.P.No.4017 of 2016 in W.P. No.16274 of 2016, W.V.M.P.No.4124 of 2016 in W.P.No.23438 of 2016, W.V.M.P.No.4007 of 2016 in W.P. No.16272 and 2016 and

W.V.M.P.No.4618 of 2016 in W.P.No.23280 of 2016 are dismissed.

No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-09-2018

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