

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.40561 of 2016

ORDER:

The writ petitioner was the aspirant of quartzite mining lease. The respondent Nos.4 to 6 are also the competitors for silica sand. The official respondents are the State rep. by its Principal Secretary, Industries and Commerce Department, Director of Mines and Geology and Assistant Director of Mines, YSR Kadapa District.

2. The prayer in the writ petition reads as follows:

“.....to issue Writ, Order or Direction more particularly one in the nature of writ of mandamus declaring the proceedings of 2nd respondent in proceedings bearing D.Dis.No.31747/R5-2/2012 dated 31-07-2016 in rejecting the Prospecting License submitted by the petitioner dated 11-07-2012 for quartzite in over an extent of Acres 714.34 in Survey No.425 of Chinthakunta Village, Muddanur Mandal, YSR District as ineligible as per Sec.10 (A) (1) of Mines and Minerals (Development & Regulation) Amendment Act 2015 and granting Prospecting Licenses to respondents 4, 5 and 6 in proceedings No.1437/R5-2/2015 dated 21-05-2016 by the Director of Mines and Geology on the application of respondent No.4 dated 26-11-2014 in over an extent of 23.000 hectares in Sy.No.425 of Chinthakunta Village, Muddanur Mandal, YSR District and on the application of respondent No.5 dated 28-11-2014 and granting PL in proceedings No.103/R5-2/2015 dated 21-05-2016 and consequently executing and issuing work orders in proceedings No 3571/PL/2014 dated 13-07-2016 and on the application dated 30-07-2014 of respondent No.5 granting PL in proceedings No.9350/PL/2014 dated 13-07-2016 and on the application of respondent No.6 dated 30-07-2014 in granting PL in over an extent of 24.000 hectares in Sy.No.425 of Chinthakunta Village, Muddanur Mandal, YSR District in proceedings No 9355/R5- 2/2015 dated

21-05-2016 and executing and issuing work orders in proceedings No 2130/PL/2014 dated 30-06-2016 as arbitrary illegal unjust and unconstitutional and in violation of Mines and Minerals (Development & Regulation) Amendment Act 2015 and Article 14 of the Constitution of India consequently call for records and set aside the grant of PLs in favour of respondent Nos.4, 5 and 6 and direct the respondents 1, 2 and 3 to grant PL to the petitioner on his application dated 11-07-2012 and pass such other order or orders.....”

3. Along with the writ petition there is interim application in WPMP/I.A.No.49971 of 2016:

“.....to suspend the proceedings of the Director of Mines and Geology bearing D.Dis.No.31747/R5-2/2012, dated 31-07-2016, granting Prospecting Licenses to Respondents 4, 5 and 6 in proceedings No 1437/R5-2/2015 dated 21-05-2016, proceedings No.103/R5-2/2015 dated 21-05-2016, proceedings No 9350/R5-2/2015 dated 21-05-2016, proceedings No.9355/R5-2/2015 dated 21-05-2016, pending disposal of the writ petition and pass such other order or orders.....”

4. The writ petition affidavit averments vis-à-vis oral submissions of the learned counsel for the petitioner are that the petitioner applied in Form-B for grant of quartzite in over an extent of Ac.714.34 cents in survey No.425 of Chinthakunta Village, Muddanur Mandal, YSR Kadapa District, along with application fee and other documents as per Rules to the Assistant Director-respondent No.3. That was acknowledged by him on 11.07.2012 bearing No.2345/PL/12 and notice was issued that the area will be inspected on 09.08.2012 requesting the petitioner to attend their office on 08.08.2012 a day prior to that and to submit FMD sketch and identity proof and topo sheets and from its submission the Assistant Director forwarded the application to

the District Collector for instructing the concerned Tahsildar for submission of report of category and availability of the land on the area applied as per G.O.Ms.No.181, I&C, MI Dept. dated 28.05.1998 and the Collector forwarded to Tahsildar on 21.07.2012 who requested the Special Officer, Chinthakunta Gram Panchayat by reference No.B301/12 dated 24.08.2012 for submission of the Gram Panchayat resolution for grant of prospecting licence to the area applied. The survey and inspection was not conducted on 09.08.2012 due to pre-occupation of the Assistant Director of Mines supra. On 17.07.2014 notice was received again to attend for inspection to be conducted on 12.08.2014. There were other applications for silica sand and gravel in the area and therefrom the writ petitioner sought for under RTI Act the status of the applications of others. The Assistant Director furnished by letter No.2627/SHA/2015 dated 11.02.2015, the list of applications received and their status and also written a letter to the RDO and DFO concerned dated 21.05.2015 for fixing of date for joint survey and inspection for issue of NOC and to submit to District Level Screening Committee as per G.O.Ms.No.2 dated 02.01.2013. The RDO requested the Tahsildar for submission of report after due enquiry by letter dated 05.06.2015. NOCs were issued on the subsequent applications and those were processed for issuance of PLs, which were furnished when petitioner sought under RTI Act. The further averment is that orders are passed on the subsequent applications granting PLs to respondent Nos.4 to 5 overlapping the area applied by the petitioner, though as per Rules his application shall be considered first and PL shall be granted as he

hold priority and once NOC is issued over subject area that will hold for all applications including of the petitioner for the prospecting licence of quartzite in survey No.425 of Ac.714.34 cents supra. The potential mineral bearing area is in over an extent of Ac.100.00 cents. PLs are granted to respondent Nos.4 to 6 in survey No.425 by referring to their applications respectively dated 26 & 28.11.2014 and 03.07.2014 for 23 hectares, 8 hectares, 18 hectares and 24 hectares respectively for silica sand by proceedings of granting PL dated 21.05.2016 bearing Nos.1437, 103, 9350 & 9355 and proceedings of execution and work orders are respectively bearing Nos.3544/PL/2014 dated 16.07.2016, 3571/PL/2014 dated 13.07.2016, 2139/PL/2014 dated 13.07.2016 & 2130/PL/2014 dated 03.06.2016.

5. The application of the petitioner dated 11.07.2012 even pending and petitioner is entitled to grant of PL for holding all priorities, PLs are granted to respondent Nos.4 to 6 over same area and the petitioner's application was rejected as ineligible as per Section 10(A)(1) of MMDR Amendment Act 2015 by the 2nd respondent-Director of Mines and Geology. The Mines and Minerals (Development & Regulation) Act 1957 was amended by MMDR Amendment Act 10/2015 with effect from 26.03.2015. If the provisions are applied by the State Government and its authorities, all applications should be rejected as applications of respondent Nos.4 to 6 are dated 26 & 28.11.2014 and 03.07.2014. Statutory provision if has been implemented, it shall be for all applications and the writ petitioner's application dated 11.07.2012 and is entitled fro PL that could not have been

rejected on ground of Section 10(A)(1) of the amended Act 2015 and consideration of the applications of respondent Nos.4 to 6 is not only illegal but also violation of Article 14 of the Constitution of India and null and void. It is also averred that there is no opportunity before passing rejection orders much less giving show cause notice and to submit explanation, whereas while granting PLs to respondent Nos.4 to 6 in an ordinary manner and contrary to law. The Assistant Director in fact submitted combined proposal to the Director on all applications and there were joint inspection reports forwarded by District Collector for the total extent as hill poramboke as per RSR that was later transferred to UAW of the land in S.No.425 of Ac.1008.49 cents and the NOC not received over writ petitioner's application even recommended, but for the others supra. It is also averred that the 5th respondent is son of Ex-MLA and Ex-Minister and it is on the representation of Mr. P.Ramsubba Reddy, Ex-Minister, the subsequent applications were considered. As the petitioner has no alternative efficacious remedy constrained to file writ petition for these reasons in seeking the reliefs.

6. Separate counters are filed by 3rd respondent for respondent Nos.1 & 2 also and by respondent Nos.4, 5 & 6 respectively. Before coming to the counter of respondent Nos.4 to 6 and the reply affidavits to it of the petitioner and also reply affidavit to the counter of respondent Nos.1 to 3 supra, the counter affidavit of respondent No.3 for respondent Nos.1 & 2 also speaks that the 2nd respondent-Director granted prospecting licence to respondent Nos.4 to 6 referred in the writ petition and the 3rd respondent-Assistant Director executed the prospecting

licences. The amended Act 10/2015 of the Union of India covered by Gazette notification No.13 dated 27.03.2015 with retrospective effect came into force from 12.01.2015 particularly Section 10(A)(1) speaks all applications received prior to the date of commencement of the Mines and Minerals (Development & Regulation) amending Act 2015 shall become ineligible. It is thereby the 2nd respondent issued the impugned proceedings dated 31.07.2016 stating the petitioner's application is ineligible pursuant to that. The 2nd respondent granted prospecting licence in silica sand to respondent Nos.4 to 6 in the same survey No.425 keeping in view of letter of intent issued by the 1st respondent so as to promote the manufacture sand instead of using the natural sand and respondent Nos.4 to 6 stated of interested in establishing mineral based industry and development for early realization of mineral revenue to the State Government exchequer by promising to provide more employment to local skilled and unskilled educated unemployed and from Revenue Department not issued NOC for the extent applied by the petitioner though sought NOC by the Assistant Director. It is also stated that as per Rule 12(5)(a)(i) r/w Rule (b) of A.P. Minor Mineral Concession Rules 1966 as amended, application for grant of PL or QL for granite and marble shall be disposed off by the Director in order of their receipt. Whenever more than one application is received on same day, the Director shall grant licence or lease to the deserving application on merits to be recorded in writing. Provided that the Director may grant PL or QL to an application whose application is received later, in preference to earlier application with the prior approval of the Government for any

special reasons to be recorded in writing. In the case on hand, the Government by memo dated 22.02.2016 agreed in principle, to grant of prospecting licence for 23 hectares in S.No.425 (new S.No.673) supra for 2 years period to Smt. Y.Mamatha (respondent No.4) for captive use for Robo sand (sand manufacture from boulders) subject to establishment of mineral based industry duly overlooking the priority over the PL application filed by the petitioner-CS Reddy and rejected the ML application dated 26.11.2014 filed by same applicant (Mamatha) for the same area. As the proviso to the Rule confers power on Government to consider in preference subsequent to the earlier application for special reasons and such power is exercised in case of grantees i.e., respondent Nos.4 to 6. Thereby the writ petition has no merit and liable to be dismissed. The respective counters of respondent Nos.4 to 6 also in same line with any further details no way require repetition in answering the writ petition limited lis concerned.

7. So far as maintainability of writ petition in the factual scenario concerned, availability of inter departmental remedy of appeal/revision is not a bar to the maintainability of writ petition as per settled law including from any involvement of question of fact. It is the settled law that any violation of law or any decision taken contrary to the provisions and arbitrary is prone to writ jurisdiction even alternative remedy available. Here coming to the facts, it is necessary to refer the interim order passed by this Court in the writ petition on 28.11.2016 as follows:

“Heard.

The petitioner made an application for prospecting of license for quartzite. Such application was also made by respondents 4 to 6 to grant prospecting license for quartzite or silica sand before 26.03.2015 and the principle on which the application of the petitioner was rejected was equally applicable to respondents 4 to 6, whereas license is granted to respondents 4 to 6 while the application of the petitioner was rejected.

Ordinarily, the petitioner's application would have got priority, as it was made earlier in point of time to the submission of the application by respondents 4 to 6, based on the principle of first come first served.

Learned Government Pleader for Mines and Geology submits that the license granted to respondents 4 to 6 was of silica sand. She does not dispute the fact that applications of respondents were also earlier to cut off date.

Learned counsel for the petitioner contends that silica sand is a by-product of the quartzite and therefore it cannot be said that they could have been granted license ignoring petitioner. Further, whether it is quartzite or silica sand, the same principle is applicable and admittedly all applications were prior to the cut off date and thus the principle on which the application of the petitioner was rejected would equally apply.

Learned counsel for respondents 4 to 6 requests two (2) weeks time to file counter.

Prima facie, I see merit in the contention urged by learned counsel for the petitioner.

Therefore, respondents 4 to 6 are directed to maintain *status quo* obtaining as on today and shall not undertake any activity in the subject premises for a period of three (3) weeks.

At request of learned counsel for respondents 4 to 6, post on 05.12.2016 in Motion List for filing counter.

In the meantime, learned Government Pleader for Mines and Geology shall also file its counter."

8. Subsequently while extending from time to time in W.P.M.P.No.49971 of 2016 and after hearing both sides the

elaborate arguments at length deciding the writ lis on 06.01.2017, this Court passed the following order:

“Petitioner submitted application dated 11.07.2012 for Quartzite mining lease over an extent of 714.34 acres in Sy.No.425 of Chintakunta village, Muddanur Mandal, Y.S.R.Kadapa District. Respondents 4 to 6 have also applied for quartzite mining lease in the same survey number over lapping the area of the petitioner, but of a very small extent as compared to the petitioner. In addition, respondents 4 to 6 have also applied for grant of mining lease for silica sand. The application submitted by the petitioner was rejected by the Director of Mines and Geology (2nd respondent) vide his proceedings dated 31.07.2016 on the ground that said application is hit by the provision in Section 10(A)(1) of Mines & Minerals (Development and Regulation) Act, 1957 (for short, ‘Act, 1957’), as amended by the Act, 2015. The applications submitted by the respondents 4 to 6 insofar as quartzite mineral was also rejected, but simultaneously their application for grant of mining lease for silica sand was granted. Petitioner challenges the order of rejection of his application and grant of mining lease of silica sand in favour of respondents 4 to 6 in this writ petition.

2. By order dated 28.11.2016, this Court directed to maintain *status quo* obtaining as on that date, operative for a period of three weeks, while granting time to respondents 4 to 6 to file counter.

3. Heard Smt. N.Sbhoba, learned counsel for petitioner, Sri S.Niranjan Reddy, learned counsel for respondents 4 to 6, and learned Government Pleader for Mines and Geology for the purpose of consideration of continuation of interim relief.

4.1. The foremost submission of the learned counsel for petitioner is that respondents 4 to 6 could not have been granted mining lease for silica sand mineral in the same land while rejecting the application of the petitioner; that all the applications of the petitioner and the respondents 4 to 6 were submitted prior to 12.01.2015. If the petitioner

application is rejected by referring to the provision in Section 10(A)(1) of the Act, 1957, the applications of the respondents 4 to 6 are also liable to be rejected on the same principle.

4.2. By referring to the provision in Section 10(A)(1) of the Act, 1957, learned counsel for petitioner further submitted that by the time Section 10(A) was introduced, quartzite and silica sand were major minerals and, therefore, are governed by the provisions in Section 10(A)(1) of the Act, 1957. Neither petitioner nor respondents 4 to 6 were granted Letter of Intent nor Central Government has granted previous approval and, therefore, the saving clause incorporated in Section 10(A)(2)(c) of the Act, 1957 is also not attracted to the respondents 4 to 6. Thus, when the application of the petitioner was rejected on the ground that it was hit by the provision in Section 10(A)(1), applications of respondents 4 to 6 were also liable to be rejected on the same ground both, quartzite and silica sand mineral and different yardstick cannot be applied for the persons similarly situated.

4.3. Learned counsel further contended that quartzite and silica sand was subsequently made as minor minerals, but the amendment to the Act came into force subsequent to the effective date of coming into force of Section 10(A) of the Act, 1957 and, therefore, application filed by the petitioner and the respondents 4 to 6 are not saved merely because of subsequent change in the status of minerals for which applications for mining leases were made. She therefore submitted that it was clear case of arbitrary exercise of power and a story is invented to grant silica sand mining lease in favour of respondents 4 to 6.

4.4. By referring to the correspondence placed on record, she further submitted that all along, respondents 4 to 6 were representing to ignore the application of the petitioner and to grant mining lease to them by exercising power of prioritizing the applications ignoring the principle of first come first consideration basis. She would therefore submit that correspondence on record would disclose that

respondent authorities wanted to favour the respondents 4 to 6 and in order to grant such favour on them, it was invented that the Government is intending to encourage Robo sand and respondents 4 to 6 should be granted mining lease of silica sand.

4.5. She submitted that quartzite is a valuable mineral and if good quality of quartzite is secured, there is high demand and would secure high price as compared to silica sand. It is a precious mineral. Silica sand is a by-product of the Quartzite mineral. What is sought to be done by respondents 4 to 6 is to break the quartzite mineral and to extract silica sand from out of it, whereas in ordinary course, while extracting quartzite mineral, residuary portion of the stone blocks silica sand can be obtained. On the contrary, either respondents intend to convert the entire formation into silica sand or in the guise of silica sand licence, they would also extract quartzite and do illegal business.

4.6. She therefore submitted that the action of the respondents is not sustainable and since the licence granted in favour of respondents 4 to 6 is void *ab initio* in view of the provision contained in Section 10(A)(1) of the Act, the question of permitting respondents 4 to 6 to undertake mining operations does not arise.

5.1. Sri S.Niranjan Reddy sought to contend that once mining application of the petitioner was rejected for quartzite mineral, petitioner has no manner of right to contest granting of mining lease to respondents 4 to 6 for silica sand as petitioner did not apply for silica sand. He further submitted that even the application of the respondents 4 to 6 for grant of mining lease of quartzite mineral was also rejected. He further contended that quartzite and silica sand are different mineral.

5.2. By referring to the correspondence on record, he would submit that Government intend to encourage use of robo sand and discourage quarrying of sand from river bed and, therefore, with that objective only, the respondents 4 to 6 were granted licences. It is in the larger public interest. These licences were granted with a

specific objective and, therefore, there is no illegality in grant of such licences. He further submitted that Rule 12 of A.P.Minor Mineral Concession Rules 1966 (for short, 'Rules, 1966') enable the Government to ignore the priority and to grant lease to any other person and such power is validly exercised in the instant case, more so having regard to larger public interest. Thus, even if silica sand is a by-product of quartzite, there is no illegality in granting lease to respondents 4 to 6.

5.3. He would further submit that once petitioner application for mining of quartzite is rejected and petitioner has not applied for mining of silica sand, it cannot be said that petitioner is an affected party and, therefore, the present writ petition is more in the form of public interest litigation and, therefore, writ petition is not maintainable.

5.4. There is no allegation of malice attributed to any officer of the State.

5.5. He further submitted that the licence was granted on 21.05.2016, but the present writ petition was instituted on 21.11.2016. Respondents 4 to 6 have taken all the consequential approvals in pursuant to the mining lease, by the time they are about to start mining operations, this writ petition is instituted. There are no *bona fides* in instituting the writ petition and at the instance of such person the mining operation of petitioner cannot be stalled. The Government requires huge construction material for infrastructure development in the upcoming capital. It is not in public interest to stall mining operations.

6. Learned Government Pleader while broadly agreeing with the contentions of learned senior counsel, further contended that the discretion vested by Rule 12 is validly exercised as Government is in favour of using robo sand as a replacement to the regular sand. He would submit that in view of construction of infrastructure facilities in the upcoming capital, huge construction material is required. In the larger public interest leases were granted

to respondents 4 to 6. There is no illegality or irregularity in the procedure followed and petitioner has no manner of right to challenge the same.

7. It is not in dispute that application submitted by the petitioner and the respondents 4 to 6 for quartzite mineral and silica sand were prior to 12.01.2015. According to the provisions contained in Section 10(A)(1) of the Act, all pending applications as on 12.01.2015 became ineligible for consideration for grant of mining leases. It is not in dispute that by 12.1.2015, quartzite and silica sand were classified as major minerals and, therefore, the provisions of Section 5 are attracted. Thus, the applications of the petitioner as well as the respondents 4 to 6 for both minerals became ineligible for consideration.

8. *Prima facie*, I am of the opinion that as an application became ineligible for consideration in terms of provision in Section 10(A)(1) of the Act 1957, those applications cannot revive merely because the silica sand was later classified as minor mineral. By statutory interdict all those applications made before 12.01.2015 and not saved by Section 10(A)(2)(c) of the Act, 1957, lapse and are thus not deemed as pending after 12.01.2015.

9. When petitioner and the respondents 4 to 6 are similarly situated, while rejecting application of the petitioner on the ground that it is hit by Section 10(A)(1) of the Act, 1957, the application of the respondents 4 to 6 could not have been considered. *Prima facie*, I am, therefore, of the opinion that action of respondent authorities in granting of licence in favour of the respondents 4 to 6 is void *ab initio*. Respondents 4 to 6 cannot carryon mining operations based on a void exercise. Therefore, balance of convenience is not in favour of respondents 4 to 6.

10. On the issue of locus stand of the petitioner, *prima facie*, I am of the opinion that if respondent authorities could consider the application of respondents 4 to 6 for grant of mining lease of silica sand, they could not have

rejected the application of the petitioner as it was earlier in point of time and silica is a by-product of quartzite mineral. Therefore, it cannot be said that petitioner has no grievance in the manner in which his application was rejected and applications of the respondents 4 to 6 are granted.

11. Furthermore, in the larger public interest, this Court is entitled to go into the legality of exercise of power by the competent authority, when on the face of it such exercise appears to be not *bona fide*.

12. Whenever lease for exploitation of natural resources is intended to be granted, it must be in a fair and transparent manner and non-discriminatory. State as repository of natural resources must take all care and caution before allowing a person to exploit natural resources. Quartzite is a precious mineral which can fetch better revenue to the State and silica sand is a by-product of quartzite. It appears from the assessment of Department that there is good amount of quartzite available. As compared to quartzite, silica sand is less valuable mineral. If the Government intend to use silica sand as a substitute to regular sand, it ought to have assessed its requirements, the availability of mineral and its economic viability. No such exercise appears to have been done, but only in order to award leases to respondents 4 to 6 justification is sought to be given as if silica sand would replace regular sand.

13. If what is contended by petitioner is true, there is every possibility of depriving of public money and throwing out valuable mineral resources for a paltry amount. Thus, it is in larger public interest the issue requires consideration and writ petition cannot be thrown out only on the ground that petitioner is any way not entitled to get lease based on his application made prior to 12.01.2015.

14. Though primary grievance of the petitioner is rejection of his application for mining lease and granting such lease to respondents 4 to 6, the issue raised in the

writ petition has a public law element. Such state of affairs having been brought to the notice of the Court, it is the duty of the Court to the public that the truth and validity of the allegations made be examined. "It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice. [**Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, (1987) 1 SCC 227**]". Thus, the writ petition cannot be thrown out at the threshold as sought to be contended by the learned senior counsel.

15. For all the aforesaid reasons, there shall be interim suspension as prayed for."

9. Heard both sides from the material on record at length in disposal of the main writ petition on merits by holding writ petition as maintainable.

10. The undisputed facts are that the petitioner's application was dated 11.07.2012 for grant of quartzite. The applications filed by respondent Nos.4 to 6 were in 2014. The amended Act 10/2015 to the Act 1957 came into force with effect from 12.01.2015. The said amended provision particularly Section 10(A)(1) clearly speaks that all applications received prior to the date of commencement of the amended Act 2015 shall become ineligible. What Section 10(A)(2) speaks is for qualified 3 categories in (a)(b)(c). Section 10A of the amended Act reads as follows:

"10A. Rights of existing concession holders and applicants:—

(1) All applications received prior to the date of commencement of the Mines and Minerals (Development

and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of

the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government.”

11. From the above none of the respondents shall come in the categories of Section 10(A)(2) undisputedly. Leave about there is no Central Government previous approval which is mandatory for that even as per proviso to Section 10A(2) supra. The only thing to consider is the sustainability of the discrimination in granting by the 2nd respondent-Director of Mines, silica sand licence to respondent Nos.4 to 6 whose applications are subsequent in point of time in preference to the application of the petitioner earlier in point of time for quartzite. Even from the respective counter averments of the respective respondents in the attempt to justify in preference of respondent Nos.4 to 6 over petitioner in refusing the petitioner's application or granting to respondents the order of this Court dated 06.01.2017 itself is an answer same is no way justifies in continuation to the earlier order dated 28.11.2016 reproduced above itself is sufficient with no need of reproduction of such action of the 2nd respondent is unjust and illegal and contrary to Article 14 of the Constitution of India.

12. Leave it apart from the very reading of the amended Section 10(A)(1) of all applications received prior to the amended Act shall become ineligible and the rejection of the application of the petitioner passed by the 2nd respondent on 31.07.2016 is by

referring to said provision saying the petitioner's application received prior to the amended Act thereby the same is ineligible as per the amended Act provision, the applications received of respondent Nos.4 to 6 also unsustainable prior to said amended Act provision came into force they are equally ineligible and thereby liable to be rejected on par with the petitioner for no basic eligibility to consider their applications much less to grant.

13. Having regard to the above needless to go further as to after the amended Act from change as minor mineral from major minerals that makes no difference as all applications received prior to the amended Act as per the provision once ineligible and once that ineligibility applied rightly to the petitioner, same since equally applies to the respondents for granting of licence to respondent Nos.4 to 6 and also to any others pursuant to the pending applications as on 12.01.2015 are since ineligible and liable to be set aside and accordingly set aside and in particular in so far as respondent Nos.4 to 6 who are before this Court concerned, leave about for the parties not before this Court among those applications of whom granted if any, the respondent Nos.1 to 3 shall take necessary action by cancelling the same if at all in subsistence and not saved by Section 10-A(2)(c) of the amended Act.

14. With these observations, this Writ Petition only to that extent is allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.03.2018
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