HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION Nos.34842, 34909, 34928, 34932, 35217, 35227, 35252, 35276, 35284, 35287, 35289, 35315, 35316, 35333, 35376, 35652, 35660, 35661, 35664, 35665, 35670, 35677, 35680, 35681, 35684, 35688, 35792, 35817, 35848, 35877, 35984, 35992, 35993, 36023, 36045, 36118, 36165, 36168, 36220, 36304, 36450, 36479, 36491, 36521, 37724, 37755 and 37764 OF 2018

COMMON ORDER: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

These writ petitions raise similar questions.

2. We have heard the learned counsel for the petitioners in these writ petitions as well as the learned Government Pleader for the Department of Mines and Industries.

3. This Court, by order dated 28.03.2016 in PIL No.228 of 2015 directed stopping of certain mining operations and also to fix liability for unpaid royalty, penalty etc. Apparently, nothing was done by the official respondents thereafter.

4. WP (PIL) No.170 of 2016 filed thereafter led to an order dated 25.07.2018 which reads as follows:

> "We have heard the learned counsel for the petitioner and the learned Government Pleader for Mines (AP) appearing for respondents 1 and 7, learned Government Pleader for Revenue (AP) appearing for respondents 2, 4 and 8, learned Government Pleader for Home (AP) appearing for respondents 3 and 5 and the learned Government Pleader for Commercial Taxes (AP) for the ninth respondent.

2. Having regard to the nature of allegations, it would be appropriate that we hear the sixth respondent as well. Therefore, issue notice to sixth respondent.

3. Learned counsel for the petitioner is permitted to take out personal notice to the sixth respondent and file proof of the same.

4. We have perused the counter affidavit placed on record by the Assistant Director of Mines and Geology, Guntur.

5. The provisions of the Mines and Minerals (Development and Regulation) Act, 1957, in particular Section 2 thereof, puts that legislation in the exclusive domain of the Union Laws. This is also affirmed through the decisions of the apex Court. The guiding beckons among the Directive Principles of State Policy in Part IV of the Constitution ensure that one of the prime policies that would advise the Governments in management of this Nation, is to ensure that the wealth of the land does not get controlled by a few hands and would be available to the people in proper mode as is envisioned through that basic document of 'We the People of India'.

6. Looking at the manner in which the official respondents are going on with the matter, in the manner stated in their counter affidavit, that would be a wild goose chase. It would also be a situation where one may be searching for a black cat in a dark room, which is not there.

7. On the basis of the allegations which have been made by the writ petitioner, we cannot but say that in spite of the fact that huge volumes of minerals in Metric Tons (MTs) have been lost without being unaccounted for, the exchequer waits for due payments into it in accordance with law. The eligibility of the component which is called royalty or Seigniorage is ultimately due to the Nation as a

component of income which will go into the exchequer. Based on the counter affidavit on record sworn to by the Assistant Director of Mines and Geology, Guntur, in June, 2017, limestone of 500805.754 MTs was excavated from Konanki Village, 470550.764 MTs was excavated from Nadikudi and 210580.109 MTs was excavated from Kesanupalli illegally.

8. We do not find that any serious effort has been made carry the system to reach at those in conflict with law, not merely of having invited criminal liability, but also to make good the losses to the exchequer and to satisfy the financial outstandings that are due to the exchequer on account of such illegal mining. We do not see that any demand has been raised against any identified person for dues on account of such unauthorized excavation of large quantities of limestone.

9. Topping all this is, the suggestion through the counter affidavit, that the proposal of the Government is to regularize the quarrying; which matter is stated to be before the National Green Tribunal.

10. With the aforesaid, we *suo motu* order impleadment of the Union of India represented by the Department of Mines as well as the Comptroller and Auditor General of India (CAG). The learned Assistant Solicitor General will obtain instructions from those authorities as to possible course of action that could be carried forward in the aforesaid fact scenario. The Central Bureau of Investigation (CBI) represented by its Joint Director, Hyderabad, is also *suo motu* impleaded as additional respondent. The learned standing counsel for CBI (Special PP) will obtain instructions from that authority as well in the light of what is aforesaid.

> 11. We clarify that it will be open to the State Government officials, who are respondents, to place further pleadings on record including as to the progress, if any, or actions taken by them.
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> Post on 21.08.2018."

5. The aforesaid order was issued, obviously, in view of the fact that in spite of earlier orders dated 22.11.2016 and 29.11.2016 issued in W.P. (PIL) No.170 of 2016, making reference to the order dated 28.03.2016 in PIL No.228 of 2015, was apparently ignored by the official respondents. After issuance of the order dated 25.07.2018, which *inter alia* resulted in *suo motu* impleadment of the Department of Mines, Government of India, the Comptroller and Auditor General of India (CA) and the Central Bureau of Investigation (CBI), it is attempted to be shown that the official respondents took action "promptly" making reference to the earlier order issued through PIL No.228 of 2015.

6. In one go, different notices are issued by quoting Rule 26 (3) (ii) of A.P.M.M.C. Rules, 1966 on the premise that the petitioners in these writ petitions, have to furnish documentary proof in token of having paid seigniorage fee for having consumed limestone. Those notices were issued by stating particular quantities, as may be referrable to the consumption by each among the petitioners for the period from 2000-2018. Quantification is done by reference to the quantum of electricity used by the petitioners as consumers.

7. We see that those notices were issued on the basic assumption of State machinery, that it had grossly erred in not collecting the seigniorage and other payables for the period 2000-2018. This can be the reason why, in one go, demand is made for that entire period.

8. Keeping the aforesaid issue aside, the fact of the matter remains that the direction to produce documentary proof in token of payment of seigniorage is likely to exclude any plea being raised by the petitioners before the department concerned, that they are not liable to pay seigniorage at all. To that extent atleast, the petitioners' stand condemned unheard, without any pre-decisional notice and opportunity of hearing on that issue.

9. For the aforesaid reasons, the appropriate course to be adopted in these writ petitions, in the best interest of the State as well as to take care of the complaints of these writ petitioners in these writ petitions, is to grant the petitioners in these writ petitions, a framework of time within which they have to respond to the notices issued by the Assistant Director of Mines and Geology concerned and for that authority to decide on issues, including on the liability, in law, for the petitioners to pay any amount as seigniorage.

In the result, these writ petitions are ordered directing that no penalty shall be imposed and prosecution shall be initiated or carried, solely on the basis of the notices which are impugned in these writ petitions. However, any such proceedings could follow after giving opportunity to each of the petitioners to place their individual cases in response to the notices and hearing on the issue of liability to pay seigniorage or otherwise. For this purpose, we direct that the writ petitioners will file their objections to the impugned notices within a period of two weeks from today. The officer concerned will give an opportunity to the petitioners for production of documents and for personal hearing including with the right to be represented through Advocate, if the petitioners so need. We leave open all issues including the plea of the petitioners that even if they are found liable for payment, the recovery should not be for the entire period. Let it be taken by all concerned that we have not expressly stated anything in that regard. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

October 11, 2018.

<u>Note:</u>
Furnish c.c. today.
b/o
VV