THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No. 22244 OF 2020

ORDER:

In this writ petition, challenge is made to the prohibitory orders, dated 17.01.2019, passed by the Director of Mines and Geology, the respondent No.2, consequential demand notice, dated 11.03.2019 issued by the Assistant Director of Mines and Geology, Tandur, Vikarabad District, respondent No. 3 and the revisional orders, dated 15.04.2019 passed by the Principal Secretary, Mines and Industries Department, respondent No. 1.

The petitioner was granted quarry lease for excavation of stone & metal over an extent of Acs.2.00 hectares in survey No.82 of Gouraram Village, Bomraspet Mandal, Mahabubnagar, for a period of ten years by the Deputy Director of Mines and Geology, Hyderabad, vide proceedings, dated 29.03.2011. M/s. Sri Sai Constructions, Proddatur (in short 'M/s.SSC'), which was executing the contract work of widening of single lane to double lane from MHQ-DHQ of Kosigi, Doulatabad road, in Mahabubnagar District, had entered into an agreement with the petitioner on 21.12.2017 for supply of 40,000 cbm of road metal for laying of road. Petitioner has forwarded a copy of the said agreement to the respondent No.3, who in turn, has addressed a letter dated 14.06.2017 to the Executive Engineer, Mahabubnagar, to certify the procurement and consumption of 40,000 cmb of rough stone and road metal by M/s. SCC and to deduct the seigniorage charges at Rs.75/- per cbm. Accordingly, the amounts were deducted and deposited into the State Exchequer and intimated to respondent No. 3 by the District Roads and Buildings Officer, Mahabubnagar, vide letter dated 29.03.2019. While things stood thus, on 11.01.2019, the respondent No. 3 inspected the quarry of the petitioner without any intimation and issued notice dated 11.01.2019 directing the petitioner to submit his explanation, within a period of seven days thereof, for (i) failing to submit documentary evidence during inspection (ii) particulars of excavating raw material, (iii) failing to obtain permits for dispatched mineral from the respondent No.3, and (iv) failing to maintain proper and accurate records of production and dispatch of minerals. The petitioner has submitted his explanation to the respondent No. 3 on 21.01.2019 stating that the seigniorage fee was already deducted by the contractor from the bills since he supplied mineral for execution of Government works. Even before passing of the orders on the said explanation, the respondent No. 2, solely basing on the inspection report of respondent No. 3 and without issuing any notice to the petitioner, had passed prohibitory orders dated 17.01.2019 prohibiting the petitioner from the quarry operations, until further orders. Aggrieved thereby, the petitioner filed a revision before the respondent No. 1 on 13.02.2019. During the interregnum period, the respondent No. 3, without passing any orders on the explanation submitted by the petitioner on 21.01.2019, had issued another show cause notice on 31.01.2019, to which the petitioner had again submitted an explanation on 18.02.2019. Without considering the said explanation, the respondent No.3 had issued the demand notice dated 11.03.2019 directing the petitioner to remit an amount of Rs.1,57,93,470/- towards normal seigniorage fee in addition to five times penalty for the quantity for which permission was not taken, mainly on the ground that the petitioner had not submitted any documentary evidence with regard to excess quantity of raw material dispatched from the quarry lease. When the petitioner was about to file an appeal against the demand notice dated 11.03.2019, the respondent No. 1 has disposed of the revision filed by the petitioner on 13.02.2019, vide order dated 15.04.2019, modifying the penalty to that of payment of normal seigniorage fee plus one time penalty. Questioning the orders passed by respondent Nos. 1 to 3, referred to above, the present writ petition is filed.

The respondent No. 3 has filed a counter affidavit denying the material allegations made in the writ petition. As can be seen from the counter, it is specifically stated by respondent No.3 that the petitioner/lessee failed to obtain the seigniorage fee exempted transit forms which is a prior permission that was needed to be obtained from the respondent No.3 under the prevailing rules, but instead, the petitioner had supplied a quantity of 41,175 cbm of stone & metal from his quarry lease and the same is in violation of Rule 34 and also attracts Rule 26 (2) of the Telangana State Minor Mineral Concession Rules, 1966 (in short 'TSMMC Rules, 1966'), for unauthorized quarrying of stone & metal. As the petitioner failed to give proper explanation and furnish the required documentary evidence, appropriate action was initiated against the petitioner. It is averred that after affording personal opportunity of hearing to the petitioner, the respondent No. 1 has disposed of the revision reducing the penalty from five times to one time in addition to the normal seigniorage fee. Hence, the writ petition is liable to be dismissed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Mines & Geology for the respondents. Perused the entire material on record.

As seen from the record, the petitioner was granted lease for stone and metal excavation for a period of ten years, vide proceedings, dated 29.03.2011. While the petitioner was in the process of supplying 40,000 cmb of rough stone and road metal to M/s. SCC , the notice, dated 11.01.2019, came to be issued by the respondent No. 3 directing the petitioner to submit his explanation for the lapses and irregularities pointed out therein with regard to actual transit and dispatch of minerals followed by prohibitory orders, dated 17.01.2019 passed by the respondent No 2. Although the petitioner filed his explanation on 21.01.2019, a final demand notice, dated 31.01.2019 was issued by the respondent No. 3 demanding the petitioner to pay the determined penalty. Again, the petitioner submitted another explanation on 18.02.2019 apart from filing a revision before the respondent No 1 on 13.02.2019. However, the respondent No. 3 has issued another demand notice on 11.03.2019 directing the petitioner to remit an amount of Rs.1,57,93,470/- being the normal seigniorage fee in addition to five times penalty for the quantity of material/mineral for which permission was not obtained. In the meanwhile, the respondent No. 1 disposed of the revision on 15.04.2019 modifying/reducing the penalty from five times to one time in addition to the normal seigniorage fee. In the orders, dated 15.04.2019, except stating that the petitioner has not taken any prior permission, the other contentions that have been raised by the petitioner have not been dealt with by the respondent No. 1.

Admittedly, the petitioner has brought to the notice of the authorities that he has entered into an agreement with M/s. Sri Sai Constructions for supply of 40,000 cbm of rough stone and road metal. Petitioner has forwarded a copy of the agreement, entered with M/s. Sri Sai Constructions, to the respondent No.3, who in turn, has addressed a letter dated 14.06.2017 to the Executive Engineer, Mahabubnagar, to certify the procurement and consumption of 40,000 cmb of rough stone and road metal by M/s. SCC and to deduct the seigniorage charges at Rs.75/- per cbm for the said quantity of material in terms of Rule 9B of the amended Telangana State Minor Mineral Concession Rules, 1966. Accordingly, the amounts were deducted and deposited into the State Exchequer and the said fact was also intimated to respondent No. 3 by the District Roads and Buildings Officer, Mahabubnagar, vide letter dated 29.03.2019. It is evident from the letter, dated 29.03.2019 that the amounts sought to be deduced by the respondent No. 3 vide letter, dated 14.06.2017 were duly recovered by the officials of Roads & Buildings from the and were also remitted to the department concerned. The said fact has not been disputed or denied by the respondents in their counter. The relevant portion of the counter, at para 3, reads thus:-

> *"…It is further submitted that the Executive Engineer (R&B), Mahabubnagar informed this office through letter Nos. AB/A2/M/2017-18, dt: 18.09.2017, 29.08.2018 & 29.03.2019 that the contractor M/s. Sri Sai Constructions utilized a cumulative quantity of stone & metal of 41174.936 CBM, 68911.61 CBM & 68902.85 CBM respectively, with an incremental quantity of 27728 CBM from that of first reported in the year 2017, a totaling to 68902.85 CBM and recovery of seigniorage charges from the work bills of the road works…."*

The impugned order as well as the demand notices are sought to be supported by the respondents on the ground that the petitioner has failed to obtain the provision of 'seigniorage fee exempted transit forms' which was a prior permission needed to be obtained from the respondent No. 3 before dispatching the quarry metal stone to the contractor. While disposing of the revision vide orders, dated 15.04.2019, except stating that the petitioner has not obtained prior permission, the respondent No. 1 has not adverted to the fact that that the normal seigniorage fee has already been deducted from the contractor and credited to the exchequer. When the normal seigniorage fee has already been deducted from the contractor and remitted to the concerned department by the officials of Roads & Buildings in respect of supply of 40,000 cbm of road metal by the petitioner to M/s. Sri Sai Construction for laying of road, it is not understandable as to how the petitioner can be levied the normal seigniorage fee once again. It is not even the case of the respondents that there is a dispute with regard to the quantum of minerals/stones that has been supplied by the petitioner to the contractor. The petitioner has brought the attention of this Court to the order passed by the respondent No. 1, dated 19.01.2019. By the said order, the revision filed by M/s. N. Ramachandra Reddy and another, dated 30.07.2018, under similar set of facts and circumstances, was allowed by the respondent No. 1. On perusal of the facts therein, this Court does not find any difference between the revision filed by the present petitioner and the revision filed by said M. Ramachandra Reddy and another, dated 30.07.2018, which was allowed by the respondent No. 1 on 19.01.2019. Except the allegation that there is a procedural lapse, it is nobody's case that the petitioner has extracted more mineral than what he was permitted to do so, or that he has extracted any mineral beyond the leased area. Under these circumstances, this Court is of the opinion that the prohibitory orders, dated 17.01.2019 issued by the respondent No. 2 are too harsh in nature and therefore, the same are liable to be set aside. Insofar as the order, dated 15.04.2019 passed by the revisional authority i.e., respondent No. 1 reducing the penalty from five times to one time in addition to the normal seigniorage fee is concerned, the imposition of normal seigniorage fee is not at all warranted for the reason that the officials of Roads & Buildings have already deducted the same from the contractor in pursuance of the letter of the respondent No. 3, dated 14.06.2017, to the Executive Engineer, Mahabubnagar. Once the said normal seigniorage fee has already been deducted by the Roads and Buildings department from the bills of the contractor and remitted to the concerned department, such imposition of normal seigniorage fee once again is illegal, unwarranted and arbitrary, and therefore, the same is set aside. Insofar as one time penalty is concerned, this Court is of the opinion that the petitioner knowing fully well that he has to obtain necessary dispatch permits before dispatching the metal, ought to have obtained the prior permission i.e., provision of sengniorage fee exempted transit forms prior to the dispatch of material to the contractor. Therefore, this Court is not inclined to interfere with the order of respondent No. 1, dated 15.04.2019 to the extent it imposes one time penalty on the petitioner and the same is confirmed.

Accordingly, the writ petition is partly allowed. The prohibitory order, dated 17.01.2019 passed by the respondent

No. 2 is set aside. The order dated 15.04.2019 passed by respondent No. 1 insofar it directs the petitioner to pay the normal seigniorage fee is also set aside. The petitioner shall pay the once time penalty, as imposed by respondent No. 1, within a period of four weeks from the date of receipt of a copy of this order. In case, the petitioner fails to pay the penalty within the stipulated time, the respondents are free to take necessary steps to recover the same.

Miscellaneous petitions pending, if any, shall stand closed.

A.ABHISHEK REDDY, J

Date:2nd June, 2021
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