

Telangana High Court

B.Chandulal Naik vs State Of Telangana on 2 June, 2021

Bench: A.Abhishek Reddy

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No. 22233 OF 2020

ORDER:

In this writ petition, the petitioner challenges 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 Ac.4.00 hectares in survey No. 62 of Nagireddypalli Village, Bomraspet Mandal, Mahabubnagar District, for a period of ten years by the Deputy Director of Mines and Geology, Hyderabad, vide proceedings, dated 31.12.2015. That apart, the petitioner has also established a metal crusher unit in Sy. No. 272, situated at Chowdarpally Village, Bomraspet Mandal, in the name and style of M/s. Sri Sai Mining and Contractors. M/s. SRR-SRK (JV), which was executing the contract work of widening of two lane road from kilometers 59.500 to kilometers 132.033 of Manneguda-Ravulapally Section of NH 163 (erstwhile SH4) in the state of Telangana on EPC mode, had entered into an agreement with M/s. Sri Sai Mining and Contractors for supply of road metal such as dust, GSB, WMM, for widening of road. M/s. SRR-SRK (JV), through their letter dated 4.1.2019 informed the respondent No. 3 that M/s. Sri Sai Mining and Contractors, a crusher unit (being run by the petitioner) has supplied GSB, wet mix and aggregate material to their site for widening of two lane road with paved shoulders from kilometers 59.500 to kilometers 132.033 of Manneguda-Ravulapally Section of NH-163, and also furnished the monthly-wise particulars of total quantity used by them and supplied by the petitioner. It has further informed that the royalties for the said quantities has been directly deducted by the Superintendent Engineer (R&B), National Highways Circle and will be credited to the State exchequer. In total, the Executive Engineer (R&B), NH Division No. 1, Hyderabad credited an amount of Rs.4,17,46,164/- towards seigniorage charges to the exchequer.

While so, 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 for having excavated the raw material which is a violation of Rule 26(2) of TSMMC Rules, 1966; (ii) failing to obtain permits for dispatch of mineral from the Assistant Director of Mines & Geology, which is a violation of Rule 34 of TSMMC Rules, 1966; and (iii) 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 24.01.2019 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 24.01.2019, 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.1,76,46,900/- towards normal seigniorage fee in addition to penalty at 5 times & 10 times in respect of the quantity of excavated and dispatched mineral within the leased area and outside the leased area respectively, 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 collection of normal seigniorage fee along with one time penalty for the quantity for which prior permission was not taken and to collect normal seigniorage fee along with two times penalty for the quantity excavated/dispatched outside the leased area. 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. It is stated that during the inspection caused by respondent No.3, the petitioner was found to be carrying on quarry operations, both within and outside the leased area and the same amounts to violation of rules made under TSMMC Rules, 1966. It is further stated that the explanation of the petitioner for the quantities excavated outside the leased area by the local wadderas and villagers is untenable, as the lessee himself shall take the responsibility for any unauthorized quarrying of stone and metal in the vicinity of the leased area and more particularly from the leased area itself. As the explanation submitted by the petitioner was found to be untenable, the impugned demand notice was issued by respondent No.3 in terms of Rule 26 (2) read with Rule 34 (1) (2) of TSMMC Rules, 1966. As the petitioner failed to give proper explanation and furnish the required documentary evidence for the breaches pointed out in the notice, appropriate action was initiated against the petitioner. It is averred that only after affording personal opportunity of hearing to the petitioner, the respondent No. 1 has disposed of the revision reducing the penalty (i) from five times to one time in respect of the quantities excavated within the leased area and (ii) from ten times to two times, 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 31.12.2015. While the petitioner was in the process of supplying GSB, wet mix and aggregate material to M/s. SSR-SRK (JV), 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 excavation of mineral in violation of provisions of Rule 26(2) of TSMMC Rules, 1966 and the 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 24.01.2019, 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.1,76,46,900/- being the normal seigniorage fee in addition to penalty at 5 times & 10 times in respect of the quantity of excavated and dispatched mineral within the leased area and outside the leased area respectively. In the meanwhile, the respondent No. 1 disposed of the revision on 15.04.2019 with a direction to collect normal seigniorage fee along with one time penalty for the quantities excavated within the leased area and two times penalty along with normal seigniorage fee for the quantities excavated outside the leased area. 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. SSR- SRK (JV) for supplying GSB, wet mix and aggregate material. Petitioner, in his reply/representation, dated 23.01.2019 submitted to the respondent No. 2, clearly stated that the contractor had deducted the seigniorage fees and remitted to the exchequer. The said version of the petitioner is further supported by the letter, dated 09.02.2019 addressed by the Executive Engineer (R&B), N.H. Division, Hyderabad to the respondent No. 3, wherein it is stated that the metal extracted and transported by Sri Sai Mining (belongs to the petitioner) is utilized by the contractor- M/s. SSR-SRK (JV), and in respect of the same, an amount of Rs.40,17,973/- has been deducted from the bills towards seigniorage charges, and the same will be sent to the respondent No. 3 in the form of demand draft. The said fact has not been disputed or denied by the respondents in their counter.

The impugned order as well as the demand notices are sought to be supported by the respondents on two grounds: (i) 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 and (ii) that the petitioner has carried on the quarrying operations outside the leased area to a quantity of 4972 cbm, which was detected by the inspecting authority. 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 road metal by the petitioner to the contractor-M/s. SSR-SRK (JV) 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.

That insofar as the allegation that there is a procedural lapse is concerned, this Court, for the reasons stated above, 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 in reducing the penalty from five times to one time in addition to the normal seigniorage fee for the quantity for which prior permission was not taken and reducing the penalty from ten times to two times for the quantity excavated outside the leased area is concerned, the imposition of normal seigniorage fee, on the quantity which was supplied to the contractor once again, is not warranted for the reason that the officials of Roads & Buildings have already deducted the same from the contractor and remitted to the exchequer. 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 imposition of one time penalty in respect of the quantity for which prior permission was not taken 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 permission i.e., provision of 'seigniorage 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. With regard the imposition of normal seigniorage fee plus two times penalty in respect of the quantity excavated outside the leased area is concerned, considering the explanation submitted by the petitioner that the 'area/pit' pointed out by the authorities, during the inspection, is by virtue of handiwork of local vadderas and villagers, the authorities have rightly recorded the finding that the lessee himself has to take responsibility for any unauthorized quarrying of stone & metal in the vicinity of the leased area. Therefore, this Court is not inclined to interfere with the imposition of two times penalty in respect of the quantity excavated outside the leased area and the same is also 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 on the quantity of mineral, within the leased area, is also set aside. The petitioner shall pay the penalties i.e., one time penalty for the quantity excavated and transported (30100 M³) within the leased area, for which prior permission was not obtained, and normal seigniorage fee plus two times penalty for the quantity excavated and transported (4972 M³) outside the leased area, 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 penalties within the stipulated time, the respondents are free to take necessary steps to recover the same.

Miscellaneous petitions pending, if any, shall stand closed.

