(2003) 11 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 12046 of 2002 and 23678 of 2003

C. Aswatha Narayana Murthy — APPELLANT

Vs

State of A.P. and Others — RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(3)

Citation : (2004) 1 ALD 597

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Pannala Srinivas, in WP Nos. 12046 of 2002 and 2519, 2639 and 11211 of 2003, T. Jagadish, in WP Nos. 17087 and 18195 of 2002 and 2703 and 3454 of 2003, N. Ranga Reddy, in WP Nos. 17171 and 17208 of 2002 and 1101 of 2003, D. Pandu Ranga Reddy, in WP Nos. 17505 and 18720 of 2002, 23678, 9904, 11627 and 12556 of 2003, B.S. Venkata Ramesh, in WP No. 20133 of 2002 and K. Durga Prasad, in WP Nos. 1329, 1330 and 1336 of 2003, for the Appellant; Government Pleader for Mines, Industries and Commerce, for the Respondent

Judgement

V.V.S. Rao, J.—In this batch of writ petitions, the petitioners impugn the notification issued by the State of Andhra Pradesh, the 1st respondent, vide their orders in G.O. Ms. No. 180, Industries and Commerce (Mines-I) Department, dated 30.4.2002. By the said notification, purporting to exercise the power under Sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (''the Act'' for short), the Government of Andhra Pradesh amended the A.P. Mines and Mineral Concession Rules, 1966 (hereinafter called the ''Mineral Concession Rules'') and also amended Schedule-I under Rule 10 of the Mineral Concession Rules. By reason of the amendment, the petitioners, who, admittedly, hold mining leases extracting granite, building stones etc., are required to pay an amount of Rs. 500/- per CMT for granite cubes and kerbs. The petitioners are aggrieved by this enhancement and, therefore, these writ petitions. Be it noted that the petitioners do not challenge the amendment to Schedule-I insofar as the black granite and other colour granite is concerned.

They only challenge the enhancement of seigniorage fee for granite waste of less than 70 x 40 x 40 cm. size, whether black granite or colour granite. In view of the admitted position, it is not necessary to elaborate the factual background any further.

2. The 1st respondent has filed counter-affidavit opposing the writ petitions. It is brought out that the existing classification has been creating some confusion besides resulting in arbitrary levy at various levels, which ultimately resulted in revenue loss to the State exchequer. Therefore, so as to rationalize the levy of seigniorage fee, the Government thought it fit to reclassify Entry 18 of Schedule-I of the Mineral Concession Rules and accordingly, the impugned G.O. was issued. Reference is also made to the earlier G.O. being G.O. Ms. No. 331 dated 21.6.2000 in support of this. It is further stated that on a representation being made, the leaders of the granite industry submitted proposals to incorporate a new item in Schedule-I as "dimensional stones used for cubes and kerbs'' fixing a rate at the rate of Rs. 80/- per tonne (approximately Rs. 240/- per CMT) and that the orders of the Government are awaited.

3. Learned Counsel for the petitioners S/Sri D. Panduranga Reddy, T. Jagadish and Pannala Srinivas made submissions to the following effect. The impugned notification insofar as it seeks enhancement of seigniorage fee for cubes and kerbs is ultra vires the power of the State u/s 15 of the Act. They would contend that any enhancement of the rate of seigniorage fee more than once during a block period of three years would be without power or jurisdiction. The learned Counsel also would submit that if the impugned G.O. is taken to be one reclassifying the granite and granite waste, the classification is vague and does not answer twin test of classification under Article 14 of the Constitution of India. Alternatively, they would urge that as the petitioners have subsisting mining leases, any enhancement would not affect the mining leases.

4. Learned Government Pleader for Mines and Industries Sri Rajanna placed strong reliance on the judgment of the Supreme Court in D.K. Trivedi and Sons and Ors. v State of Gujarat and Ors. AIR 1986 SC 1323, in support of his contention that the State Government is competent to reclassify the minerals or the same mineral which was included in the first Schedule to the Mineral Concession Rules. He strenuously made an attempt to contend that earlier Entry 18 of Schedule-I which contained four types of granite for the purpose of seigniorage fee has now been re-classified into five types. He would urge that if this is accepted, there is no enhancement as contended by the petitioners. Alternatively, he would submit that even if it is held that it is not competent to the Government to enhance the rates of seigniorage fee more than once in a block period of three years, still, the impugned G.O. can be sustained by moulding the relief declaring that the impugned G.O. can be enforced with effect from 30.6.2003. In support of this submission he placed reliance on the judgment of the Supreme Court in State of Rajasthan Vs. Hindustan Sugar Mills Ltd. and Others, .

5. Before considering the only point that arises for consideration, this Court may dispose of a point of law raised that the enhancement has no application to the existing leases. This cannot be accepted. A reference to various Mineral Concession Rules as well as the covenants in the agreement in Form "G" would belie any contention of the petitioners'' Counsel -though feeble; that being the existing lessees, the petitioners are not bound by enhancement. After noticing the scheme of the Act and noticing various rules in the Mineral Concession Rules, it must be held that the rate of royalty or seigniorage fee, as the case may be, can be enhanced subject to Section 15(3) of the Act at any time during the subsistence of the mining lease. All the existing lessees are liable to pay the validly enhanced royalty/seigniorage fee and any default thereof would entail cancellation of the mining lease.

6. The core question is whether the impugned rule, insofar as the same deals with granite cubes and kerbs, is unenforceable in view of Section 15(3) of the Act ?

7. A reference to Sub-sections (1) and (3) of Section 15 is relevant and need to be extracted:

"Power of State Government to make rules in respect of minor minerals :--(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

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(3) The holder of a mining lease or any other mineral concession granted under any rule made under Sub-section (1) shall pay royalty or dead rent whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or'' sublessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years."

8. The Government is competent to make rules for regulating grant of mining lease in respect of mines and minerals. A holder of mining lease is liable to pay royalty/ seigniorage fee or dead rent, whichever is more, at the rate prescribed by the State Government in the rules made u/s 15(1) of the Act. The proviso to Sub-section (3), however, puts an embargo on the power of State Government to enhance the rate of royalty/seigniorage fee/dead rent in respect of any minor mineral for more than once during a block period of three years. The legal position is, therefore, clear and not seriously disputed. However, the contention raised by the State is that the impugned G.O. does not seek to enhance the seigniorage fee, but, only it seeks to re-classify the granite for the purpose of levy of seigniorage fee. I am afraid, I cannot agree with the contention.

9. To appreciate the point, it is necessary to notice the fixation of seigniorage fee and enhancement thereof from time to time as under:

Statement showing fixation of and enhancement of seigniorage fee from 27.11.1986 to 30.4.2002;

S. No. G.O. Ms. No. and Year Classification of Granite Fixation of Seigniorage fee

1. G.O.Ms.No. 606 dated 27-11-1986 1. Cut or dressed blocks (a) Black Granite. 1. Rs.500/-percmt.

2. Granite including other rocks of other colours and shades. 2. Rs.300/- per cmt.

2. G.O.Ms.No.238 dated 9-7-1992 1. Black granite 1. Rs.500/-percmt

2. Other colours. 2. Rs.300/- per cmt.

3.

Cut or dressed block, useful for tiles not exceeding the dimensions 35 cm x 30 cm x 30 cm.

3. Rs.10/- per piece

3. G.O.Ms.No.309 dated 10-9-1993 1. Black granite 1. Rs.750/-percmt

2. Other colours. 2. Rs.500/- per cmt.

3.

Cut or dressed block, useful for tiles not exceeding the dimensions 65cmx35cmx35

3. Rs.10/- per piece

4.

Kerb stones not exceeding the dimension 30 cm x 25 cm x 25 cm

4. Rs.50/- per mt.

4. G.O.Ms.No.439 dated 16-1 1-1994 1. KERB STONE 1. R.S.125/-permt.

* Rough granite useful for Kerb stones. 2. Rs.150/- per mt.

* Finished Kerb 3. Rs.40/- per mt.

2. CUBES 4. Rs.80/-permt.

* Rough granite useful for cubes

* Finished cubes not exceeding 30 cm each face.

5. G.O.Ms.No.331 dated 21-6-2000

Above 70 cm Between 31-70 cm Less than 30 cm

18 (a) Preimum Grade Rs.2000/- Rs.1000/- Rs.500/-

b. Good Grade Rs.1,500/- Rs.750/- Rs.300/-

c. Average Gr. Rs.1000/- Rs.500/- Rs.200/-

d. Granite waste/rejects. Rs.33%

6. G.O.Ms.No.466 dated 24-8-2000 Under item 18(b) of G.O.Ms.No.331 the mistake is rectified No change in Seigniorage fee.

7. G.O.Ms.No.186 dated 30-4-2002 1. Black Granite Galaxy variety. 1. Rs.2000/-

2. Black Granite other than Galaxy variety 2. Rs.1,250/-

3. Colour Granite Srikakulam Blue Variety 3. Rs.1,500/-

4. Colour Granite other than Srikakulam Blue Variety 4. Rs.1,000/-

5. Granite Waste (either Black or Colour) less than 70 x 40 x 40 cms size 5. Rs.500/-

10. It is not denied before me that the fixation of seigniorage fee of black granite in G.O. Ms. No. 606 dated 27.11.1986 treating black granite under two items was enhanced by G.O. Ms. No. 309 dated 10.9.1993. It is also necessary to notice that under G.O. Ms. No. 228 dated 9.7.1992 granite was re-classified by introducing another item as ''cut or dressed block, useful for tiles not exceeding the dimensions of 35 x 30 x 30 cm.''. Though a new item is introduced for the purpose of classification, there was no enhancement. However, the rate of seigniorage fee for black granite was enhanced from Rs. 500/- to Rs. 750/- and Rs. 300/- to Rs. 500/- in respect of granite other than black granite. Further, another category known as kerb stones was also introduced prescribing the seigniorage fee of Rs. 50/- per mt. It was further re-classified by G.O. Ms. No. 439 dated 16.11.1994 slightly increasing the seigniorage fee in respect of kerb stones while creating separate category as cubes attracting lesser amount of seigniorage fee per mt.

11. By the time the seigniorage fee was enhanced by amending the rules vide G.O. Ms. No. 331 dated 21.6.2000, black granite was re-classified into four varieties; Premium grade, Good grade, Average grade and Granite waste/rejects. Each of these varieties attract a different seigniorage fee depending on the size of the granite. However, there was uniform rate of Rs. 33/-per CMT for granite waste/rejects. Treating the cubes and kerbs as granite of average grade of less than 30 cm. Size, the department has been charging seigniorage fee of Rs. 200/- per CMT. The petitioners have been paying the said rate without any objection. Even now they are willing to pay the same rate of seigniorage. Indeed, they have no objection to pay an amount of Rs. 200/- for cubes and kerbs, whatever be the size that is extracted during the block period of three years. As per the proviso to

Sub-section (3) of Section 15 of the Act, G.O. Ms. No. 331 dated 21.6.2000 which was notified in the Gazette on 29.6.2000 would be valid for the block period from 29.6.2000 to 28.6.2003. Be it noted, as held by the Supreme Court in Hindustan Sugar Mills Ltd. and others, case (supra), ''block period'' means a period commencing from the date of commencement of the rules till the expiry of the period of three years.

12. As noticed hereinabove, the Government issued impugned G.O. further enhancing the rate of seigniorage fee on granite waste, either black or colour, of less than 70 x 40 x 40 cm. size. The State have done away with the classification into Premium Grade, Good grade, Average grade and the method of levying the seigniorage fee depending on the size of the granite, but, sought to levy uniform rate as per the classification. Insofar as the black granite galaxy variety, black granite other than galaxy variety, colour granite of Srikakulam blue variety and colour granite other than Srikakulam blue variety are concerned, there is no dispute. Insofar as the cubes and kerbs which were treated as average grade granite of less than 30 cm. size attracting seigniorage fee of Rs. 200/-per CMT is concerned, the same was included in the granite waste (variety No. 5) and the Government sought to impose seigniorage fee of Rs. 500/-. Had the Government retained Rs. 200/- per CMT on the cubes and kerbs, their contention that it is only re-classification would have been accepted. It is not so. In the guise of re-classifying average grade black granite of less than 30 cm. size as granite waste of less than 70 x 40 x 40 size, the Government certainly enhanced the seigniorage fee from Rs. 200/- to Rs. 500/-.

13. It is not a question of rationality for such enhancement which, in fact, is not within the province of these proceedings under Article 226 of the Constitution of India. In the face of the proviso to Sub-section (3) of Section 15 of the Act, the Government could not have enhanced the seigniorage fee from Rs. 200/- to Rs. 500/- on cubes and kerbs (average grade granite of less than 30 cm. size to Rs. 500/-) granite waste of less than 70 x 40 x 40 cm. size. This is clearly impermissible. What the Government cannot do directly it cannot do so indirectly in the guise of re-classification. If the contention of the State is accepted that it amounts to re-classification, it ought to be invalidated as a fraud on the statute and statutory power. Such interpretation cannot be countenanced.

14. In Trivedi''s case (supra), the Supreme Court was considering the constitutionality of Section 15(1) of the Act, especially the power of the State Government to enhance the rates of dead rent and royalty during the subsistence of such leases. The Supreme Court categorically held that the enhanced rates of dead rent/royalty are also applicable to subsisting leases and that Section 15(1) is constitutionally valid. It was further held that the State Government can classify the buildings stones into different varieties and also charge royalty there on at separate rates. The relevant observations are as under:

"Yet another contention which was raised before us was that under the definition of "minor minerals'' given in Clause (e) of Section 3 of the 1957 Act, "building stones'' are minor minerals and, therefore, u/s 15(1) the State Government can levy royalty only on building stone as such and cannot classify them into different varieties for the purpose of recovering royalty upon them at varying rates. This argument was also advanced before the Gujarat High Court and was rejected by it. We fail to understand the point which is sought to be made. As building stones have been defined as being minor minerals, the rule-making power with respect thereto vests in the State Government u/s 15(1). The 1957 Act does not enjoin State Governments to charge a uniform rate of royalty in respect of all varieties of building stones nor does it prohibit them from classifying building stones into different varieties and charging royalty thereon at separate rates. This part of the judgment under appeal of the Gujarat High Court must, therefore, be upheld."

15. I have perused the judgment in D.K. Trivedi (supra). The same does not deal with the question on hand. Though it is competent for the State to classify and re-classify the mineral into different varieties and levy different rates of seigniorage fee, the same cannot be enhanced during the block period of three years. The ratio in the said judgment does not support the learned Counsel for the Government.

16. Insofar as the alternative submission of the learned Government Pleader that the relief can be moulded is concerned, in Hindustan Sugar Mills case (supra), the Supreme Court dealt with this aspect of the matter. The observations made by the Supreme Court in Hindustan Sugar Mills case (supra) lend support to the contention of the learned Government Counsel. It was laid down there in:

"The learned Counsel for the appellant is, under the circumstances, perfectly justified in submitting that the High Court instead of striking down the Notification in toto could well have made the Notification unenforceable for a period of four months of the third four-year block expiring on 31st May, 1970, without prohibiting its enforcement even with effect from June 1, 1970 from which date the fourth four-year block commenced, and the enhancement could have been made without any impediment in law. The High Court was exercising high prerogative jurisdiction under Article 226 and could have moulded the relief in a just and fair manner as reguired by the demands of the situation. The High Court could well have proceeded on the premise that the enhancement made pursuant to the Notification dated January 29, 1970 was unenforceable for the four months preceding June 1, 1970 on which date the enhancement could have been lawfully enforced pursuant to the Notification. Till then the Notification would have remained unenforceable for that limited period of four months during which the embargo would have been in operation. In our opinion, the enhancement was merely prenature and not void in the sense that the enhancement could have been lawfully enforced with effect from June 1, 1970 and could not have been made enforceable on the date of the issuance of the Notification on 29th January, 1970. Such a Notification in the eye of law, must be treated as dormant for the interregnum of about four months till it becomes enforceable on June 1,1970 upon the commencement of the fourth four-year block. The enhancement was authorized by the Legislature. However, there was an embargo making it enforceable only once during the course of the four-year block."

17. In view of binding dicta as above, it must be held that it was impermissible to State to issue impugned orders within block period of three years. It should remain dormant from 7.5.2002 till 29.6.2003 and unenforceable. The same may be given enforceability with effect from 30-6-2003. It is also brought to the notice of this Court and it is admitted in the counter-affidavit; that by reason of the interim orders passed by this Court, the petitioners are paying seigniorage fee at the rate of Rs. 200/- per CMT on cubes and kerbs. In view of the orders passed in these writ petitions, all the petitioners are liable to pay enhanced seigniorage fee on cubes and kerbs with effect from 30.6.2003.

18. The writ petitions are accordingly disposed in terms of the observations and directions in this judgment. There shall be no order as to costs.