

(2003) 01 AP CK 0135

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6245 of 2002

Gayatri Projects Limited

APPELLANT

Vs

The Government of A.P. and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 26
Constitution of India, 1950 — Article 226

Citation : (2003) 1 ALT 454

Hon'ble Judges : N.V. Ramana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P. Gangaiah Naidu, for the Appellant; GP for Industries and A.G., for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.

1. The petitioner-company invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ particularly one in the nature of Mandamus declaring the proceedings in (1) Notice No. 2946/Q2/2001, dated 4-7-2001; (2) Notice No. 2946/Q2/2001, dated 26-9-2001; (3) Demand Notice No. 2946/Q2/2001, dated 29-12-2001; and (4) Lr. No. 2946/Q2/ 2001, dated 19-1-2002 issued by the third respondent-Deputy Director of Mines and Geology, Visakhapatnam, as illegal, improper, unjust and contrary to law. The petitioner-company accordingly challenges the levy of normal seigniorage fee and five times penalty thereon as illegal and unjust.

2. Before advertng to the question as to whether the impugned proceedings suffer from any legal infirmities, it may be necessary to briefly notice the relevant facts leading to filing of this writ petition:

The petitioner-company, similar to that of the petitioners in other writ petitions - W.P. No. 6916 of 2002 and Batch disposed of by us relating to the levy of

seigniorage fee and penalty thereon with regard to the material consumed, is a sub-contractor of M/s. Bharat Heavy Electricals Limited (BHEL). It was awarded the work, viz., "site levelling and gradation work" at Simhadri Thermal Power Project, Visakhapatnam on 4-1-1999 by BHEL.

3. We have already noticed in W.P. No. 6916 of 2002 and Batch that according to the specifications of the contract, the material used for constructing the embankment by earth filling shall be Morram, Gravel, a mixture of these or any other material approved by the Engineers. The material shall be free from lumps and clods, boulders, rock pieces, roots and vegetation, harmful salts and chemicals, organic materials and loose silts, fine sands and expansive clay in order to provide a suitable embankment. It is the case of the petitioner-company that after taking over the site from BHEL, it had identified several ponds and other patta lands outside the plant area to excavate suitable earth for filling. The samples of earth material proposed to be used for filling were sent to Civil Engineering Department of Andhra University for the purpose of testing its suitability and identification of the material. The test reports of the samples were duly submitted to the third respondent periodically as is required under the contract and after their acceptance, earth and soil alone were used as filling material. The University at every stage certified that the material used for filling purpose was earth/soil, which is not seigniorable.

4. We have already noticed while disposing of the other writ petitions - W.P. No. 6916 of 2002 and Batch, as to the details of the meeting that was held by the Director of Mines and Geology with the officials of the petitioner-company and other contractors along with the officials of NTPC and BHEL to discuss about the payment of seigniorage fee, and the procedures that were agreed upon for levy and collection of seigniorage fee. We have also noticed the details of the proceedings dated 10-2-2000 addressed by the Deputy Director of Mines and Geology, Visakhapatnam to BHEL for realization of seigniorage fee on filling material in pursuance of the agreement reached in the meeting held on 4-9-1999.

5. The petitioner-company vide its letter dated 4-3-2000 addressed to the BHEL stated that it is not liable to pay the seigniorage charges towards the earth/soil excavated from various sources of tank beds for filling works carried out under the said contract. In the meanwhile, the petitioner-company preferred W.P. No. 4538 of 2000 seeking appropriate declaration that the action of the respondents in insisting for payment of seigniorage fee for earth/soil obtained from the ponds and patta lands treating the same as minor mineral is illegal and arbitrary. However, the main relief sought for by the petitioner-company is against the BHEL to release the bill amount dated 12-1-2000 even while the dispute between the department and the petitioner-company with regard to the payment of seigniorage fee was pending.

6. This Court by an order dated 28-4-2000 in WPMP No. 6030 of 2000 in W.P. No. 4538 of 2000 having noticed the demand for payment of Rs.46,02,77,940/- as against the BHEL towards the seigniorage fee directed the petitioner-company to

give bank guarantee for the payment so far as the seigniorage fee payable by the petitioner is concerned and accordingly the department was directed to issue demand within a period of two weeks from the date of the order and on furnishing the bank guarantee to the value equivalent to that of the amount mentioned in the demand notice the bills were directed to be released in favour of the petitioner-company. That order is subsequently vacated on 13-10-2000 since the petitioner-company did not furnish any bank guarantee. The said writ petition itself was dismissed as infructuous at the request of the petitioner by order dated 20-12-2002.

7. The Deputy Director of Mines and Geology, Visakhapatnam vide proceedings dated 25-5-2000 required the petitioner-company to pay the normal seigniorage fee of Rs.1,73,91,860/- and five times penalty of Rs.8,69,59,300/- aggregating to Rs.10,43,51,160/- for a quantity of 17,39,186 cubic meters of filling material. It is specifically alleged in the said notice that the filling material used and consumed by the petitioner-company is gravel for which the seigniorage fee is liable to be paid. The quantity of the filling material is estimated at 17,39,186 cubic meters. Thereafter, the respondents by proceedings dated 23rd October, 2000 reiterated the demand and accordingly required the petitioner-company to pay mineral revenue dues of Rs.10,43,51,160/- within ten days.

8. The petitioner-company by its letter dated 6-11-2000, in response to the demand notice dated 23-10-2000, informed the department that the filling material consumed by it contains earth/soil/ gravel. The petitioner-company had requested the officials of the department to inspect the areas from where they supplied the filling material. They have also given the details of those areas in their letter. The then Deputy Director vide his letter dated 8-11-2000 requested the Head of the Department of Civil Engineering of Andhra University to conduct analysis and test of the samples and the Department accordingly furnished analysis report dated 13-11-2000.

9. All of a sudden, the Deputy Director issued No Objection Certificate dated 22-12-2000 expressing no objection to clear the bills in respect of the petitioner-company. We have already noticed the conduct of this particular Deputy Director about which there need be no reiteration.

10. The Director having noticed the conduct of the Deputy Director issued proceedings dated 16-2-2001 directing the Deputy Director to adhere to the original demand. The Deputy Director once again vide proceedings dated 24-2-2001 issued the revised demand for Rs.1,42,23,770/- only for a quantity of 17,51,252 cubic meters of filling material without levying five times penalty. Even this order has been challenged by the petitioner-company in W.P. No. 4579 of 2001. The petitioner-company relied upon the so-called No Objection Certificate dated 22-12-2000 given by the Deputy Director of Mines and Geology. This Court by its order dated 28-3-2001 disposed of the said writ petition at the admission stage itself directing the department to issue a provisional assessment of the seigniorage fee and/or other mineral dues, that in the assessment of the

respondents 1 and 2 the petitioner is due to the State Government under his contract with the third respondent, within one week from the date of receipt of a copy of the order. It is further directed that the said assessment shall "contain the statements setting out the basis on which the assessment is arrived at and shall set out the amounts already paid by the petitioner in this regard and the principles or reasons for the amounts arrived at, including any material in this behalf furnished by the third respondent or the petitioner, to the respondents 1 and 2. The petitioner would be at liberty to submit its objections, to any such provisional assessment communicated to it by the respondents 1 and 2 within one week thereafter.....It is needless to state that the final assessment to be made by the respondents 1 and 2 as directed above shall record reasons duly considering the objections raised by the petitioner to the provisional assessment."

11. The order in the writ petition resulting in such far-reaching consequences has been disposed of at the admission stage. The fact remains that the Department did not issue any such notice within the stipulated time, but, pursuant to the order passed by this Court in W.P. No. 4579 of 2001 the Deputy Director once again raised the demand, vide notice dated 4-7-2001, for payment of Rs.10,99,45,630/-, deducting the amount paid subsequently of Rs.25,56,950/- (normal seigniorage fee of Rs.1,87,50,430/- plus five times penalty of Rs.9,37,52,150/-) on a total quantity of 19,25,037 cubic meters of filling material. In the said demand notice, it is clearly stated that the Deputy Director of Mines and Geology, Visakhapatnam having inspected the areas arrived at a conclusion that the material supplied by the petitioner-company from the nearby hill slopes is gravel and from the tank beds is ordinary clay and both are declared as minor minerals and hence the seigniorage fee is chargeable. In the said demand notice, it is observed:

"As per the information available in the records of the office of the Assistant Director of Mines and Geology, they have paid seigniorage fee for the quantity of 49,994 cubic meters by way of obtaining temporary permits. Thus there is a variation to the quantities supplied by M/s. Gayathri Projects Ltd., to M/s. BHEL and the quantities covered under permits. According to the provisions of the APMMC Rules, 1966 nobody shall undertake quarrying operations without lease or permit obtained under the said Rules. Contravention of these said rules result in levy of normal seigniorage fee together with 5 times penalty under the provisions of Rule 26 of the APMMC Rules, 1966. Therefore, M/s. Gayatri Project Ltd., is hereby requested to show cause as to why action should not be taken against them for imposing following normal seigniorage fee and 5 times penalty.

1. Quantity supplied: $17,39,186 + 1,85,851 = 19,25,037$ cubic meters.
2. Quantity for which permits obtained 49,994 cubic meters.
3. Quantity not covered under permits 18,75,043 cubic meters.
4. Normal seigniorage fee Rs. 1,87,50,430/-

5. 5 times penalty Rs. 9,37,52,150/-
6. Total Rs.11,25,02,580/-
7. Amount paid subsequently Rs. 25,56,950/-
8. Balance payable Rs.10,99,45,630/-

If they have any documentary evidence to show that they procured material by obtaining lease or permit or from the authorised lease holders duly obtaining permits they may produce such evidence within one week or otherwise it will be construed that M/s. Gayatri Project Ltd., have no documentary evidence to substantiate the source of supply of the material and the normal seigniorage fee and penalty as indicated in pre-para will be levied."

12. In the meanwhile, the petitioner-company filed W.P. No. 13629 of 2001 on 27-6-2001 inter alia contending that in spite of the specific directions from this Court, the Department failed to make any provisional assessment and, therefore, the inevitable conclusion is that the petitioner-company is not due any amount to the department. The petitioner-company accordingly prayed for issuance of a writ of Mandamus directing the department to refund the excess amount of Rs.21,61,900/- paid by the petitioner-company towards seigniorage fee and other mineral dues in relation to the contract work and further direct the BHEL (principal contractor) to pay the balance contract amount of Rs.2,70,30,000/- to the petitioner-company. This Court on 23-7-2001 passed an interim order directing the petitioner-company to furnish an irrevocable and unconditional bank guarantee in an amount of Rs.2,70,30,000/- (Rupees two crores seventy lakhs and thirty thousand only) drawn from any nationalized bank in favour of the Director of Mines and Geology, Government of Andhra Pradesh. The Director of Mines and Geology shall forthwith issue a Certificate to the BHEL to the effect that the petitioner has furnished such a Bank Guarantee, with a copy marked to the petitioner. On receipt of such Certificate from the Director of Mines and Geology, the BHEL shall release an amount of Rs.2,70,30,000/- (Rupees two crores seventy lakhs and thirty thousand only) or any lesser amount found by the BHEL to be due and payable to the petitioner in respect of the works executed by the petitioner under the STPP contract. Liberty was given to the department to determine the liability of the petitioner for payment of seigniorage fee, if any, in accordance with law and is also at liberty to pursue such measures as are available in and under law to realise such demands.

13. Thereafter, the Assistant Director of Mines and Geology issued show cause notice dated 26-9-2001 requiring the petitioner-company to show cause as to why Rs.10,96,45,630/- shall not be collected towards the seigniorage fee together with five times penalty under Rule 26 (3) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules"). The objections, if any, were required to be filed along with the documentary evidence within two weeks from the date of receipt of the notice. The said show cause notice is self-explanatory and a very detailed one. The petitioner-company submitted a

detailed representation dated 8-10-2001 as against the notice dated 26-9-2001 received by the petitioner-company on 3-10-2001.

14. The Deputy Director rejected the said explanation and raised the demand requiring the petitioner to pay the said amount vide notice dated 29-12-2001. Thereafter, there has been some further correspondence in the matter and it is not necessary to notice the details thereof.

15. This writ petition is filed mainly challenging the levy of seigniorage fee. Sri P. Gangaiah Naidu, learned Senior Counsel appearing on behalf of the petitioner-company contends that the department went on issuing inconsistent demand notices without specifying as to what material has been consumed by the petitioner-company in the filling work undertaken by it under an agreement with the principal contractor. It is submitted that the Department is not sure as to the nature of the material utilized by the petitioner-company and whether such material is seigniorable or not. The learned Senior Counsel further contends that subsequent show cause notice and demands raised are not in tune and in accordance with the orders passed by this Court in W.P. No. 4579 of 2001 dated 28-3-2001. The learned Senior Counsel contends that the petitioner-company mainly utilized the earth/soil as filling material and the same is not seigniorable in the light of the judgment rendered by this Court in W.P. No. 2741 of 1999 and Batch, dated 3-3-1999. It is contended that the Civil Engineering Department of Andhra University testified that the material used by the petitioner-company is only earth/soil and such material is not seigniorable.

16. The learned Advocate General appearing on behalf of the State contends that there is no procedure for making any provisional assessment and inviting objections for levy of seigniorage fee. The Rules do not require any such procedure. It is also contended that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not exercise any appellate jurisdiction over the action of the respondents in levying and demanding seigniorage fee. It is contended that the nature of the material utilized by the petitioner-company and as to whether the same is seigniorable or not is a question of fact and it would not be possible nor desirable to make any roving enquiry into such disputed questions of fact by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is submitted that at every stage the petitioner-company has been given an adequate opportunity to represent its case and the orders passed after consideration of such representation cannot be interfered with by this Court unless it is pleaded and clearly established that such proceedings are vitiated by an error apparent on the face of the record. It is also submitted that this Court is required to take the conduct of the petitioner-company into account and the obstacles created by it virtually depriving the department of its legitimate right to levy and collect the seigniorage fee. The petitioner-company having included the amount of seigniorage fee liable to be paid by it in the contract with the BHEL cannot be permitted to turn round and dispute the very levy of the seigniorage fee. It is

submitted that what is exempted and not seigniorable is pure and simple earth/soil, which does not contain any seigniorable mineral. Earth which, contains fines and seigniorable mineral, cannot be exempted from the seigniorage fee. The certificates, if any, issued by the Civil Engineering Department of Andhra University are of no consequence. The rules do not provide for referring the matter for any chemical analysis as to the nature of material and the qualified geologist can always physically verify the material and arrive at their own conclusion in order to decide as to whether the material utilized is a mineral in respect of which seigniorage fee is leviable.

17. We have given our anxious consideration to the rival submissions made. We have perused the records made available pursuant to the rule nisi issued by this Court. We have also noticed the sequence of events leading to filing of this writ petition.

18. Before we really undertake to analyze and critically examine the submissions made by either of the parties, we are constrained to make certain preliminary observations. This unending saga relating to the levy and collection of seigniorage fee is mainly attributable to the conduct of some of the personnel working in the department itself, in a manner detrimental to the interest of the department. More particularly, the Deputy Director working, at the relevant time, at Visakhapatnam in utter disregard to the directions of the competent authorities went on creating confusion and deliberately created contrived situation facilitating the petitioner-company to frequently approach this Court by filing writ petition after writ petition. We are told that the said officer has been placed under suspension and disciplinary enquiry has been initiated against him, and a report has been submitted by a Senior Officer of rank of Principal Secretary holding him guilty of misconduct.

19. We are also required to notice that the interim orders passed by this Court in W.P.Nos.4538 of 2000 and 13629 of 2001 are of no consequence since those writ petitions themselves were dismissed and that too at the request of the petitioner on the ground that the cause in those writ petitions does not survive requiring any further adjudication by this Court. Therefore, we are of the considered opinion that no reliance could be placed upon the interlocutory orders passed by this Court.

20. We are also constrained to observe that the demand notice dated 25-5-2000 issued by the department requiring the petitioner herein to pay a particular amount towards seigniorage fee, has not been issued pursuant to the interim order passed by this Court alone in W.P. No. 4538 of 2000. There is a reference to the order passed by this Court directing the respondents to serve a demand notice in order to enable the petitioner-company to furnish bank guarantee to facilitate the withdrawal of the bills from BHEL. The source for levy of seigniorage fee and demand for the payment of the same cannot be attributed to the order itself passed by this Court. At any rate, the said writ petition itself has been dismissed and the interim order passed, if any, gets merged into the main writ

petition.

21. In our considered opinion, the order passed by this court in W.P. No. 4579 of 2001 dated 28-3-2001 at the admission stage may be binding between the parties since no appeal has been preferred against it. We are not inclined to agree with the view taken by this Court requiring the department to issue a provisional assessment of the seigniorage fee setting out the basis on which the assessment is arrived at and also requiring the department to state further reasons as to on what basis the demanded amounts have been arrived at etc. The rules do not provide for any such provisional assessment. Therefore, the order has no effect of any binding precedent. However, it should not be understood that the respondents are not required to comply with the principles of natural justice in the matter of levying and demanding the seigniorage fee. The aggrieved person is always entitled to raise objections and join issue with the department and in such case, the department is bound to provide the basis on which the seigniorage fee is levied and demanded.

22. It is now well settled that the statutory authority which is entrusted by statute with the discretion, must act fairly. Due to rapid development and growth of constitutional law as well as administrative law, the requirement to act fairly and reasonably has become an integral part of principles of natural justice.

23. The Court, however, cannot compel the respondents to act in a particular manner and follow some procedure, which is not provided for either under the parent Act or under the Rules. The Court cannot evolve any special procedure not contemplated by the statute or the rules, as the case may be.

24. In W.P. No. 4538 of 2000 and W.P. No. 13629 of 2001 the petitioner-company challenged the very action of the department in insisting it to pay the seigniorage fee or dead rent on earth/soil obtained from ponds and patta lands treating it as minor mineral and classified as ordinary clay, as illegal and improper. The sum and substance in both the writ petitions is one and the same. The petitioner-company has unconditionally withdrawn the said writ petitions. The same question is once again raised in the present writ petition.

25. Insofar as the contention that the respondents raised inconsistent demands is concerned, we have already expressed our view that the same is on account of the mischief played by the Deputy Director of Mines and Geology, Visakhapatnam. This much is clearly evident from the record. Such inconsistent demands itself would not put an end to the controversy raised as to whether the petitioner-company is at all liable for payment of any seigniorage fee.

26. The petitioner herein and other sub-contractors have deliberately created some sort of confusion. Each one of them made attempts to take advantage of the order obtained by others in various writ petitions filed challenging various proceedings; whereunder seigniorage fee has been levied. No doubt, there is some commonality with regard to the issues that arise for consideration. But the facts in each of the case are different. The demand notices are separate and

amounts demanded from each of the sub-contractors are also different.

27. It is not necessary to really make any pronouncement with regard to the contention that the demand notice dated 4-7-2001 issued by the Deputy Director is not in accordance with the directions of this Court issued in W.P. No. 4579 of 2001 since the respondents have issued revised show cause notice dated 26-9-2001 pursuant to the observations made by this Court in WPMP No. 17000 of 2001 in W.P. No. 13629 of 2001, dated 23-7-2001.

28. The show cause notice dated 26-9-2001 requiring the petitioner-company to show cause as to why Rs.10,96,45,630/- shall not be collected towards the seigniorage fee including five times penalty under Rule 26 (3) of the Rules is self-explanatory. It runs into several pages. The show cause notice refers to the total quantity of material supplied by the petitioner-company estimated at 19,25,037 cubic meters. In the said show cause notice, it is also indicated that the petitioner-company obtained permits only for the quantity of 49,994 cubic meters. The quantity of material stated to have been procured from one G. Kurma Rao is also quantified at 5,000 cubic meters. The quantity of material supplied by the petitioner-company not covered by any permits is estimated and quantified at 18,70,043 cubic meters. The amounts already paid by the petitioner-company had been taken into consideration. In the said show cause notice, it is alleged that the petitioner-company had executed the works without obtaining the permits as is required under the Rules. It is under those circumstances, it is averred that it is not possible to estimate the gravel component and ordinary clay component separately.

29. Be that as it may, it is stated in the show cause notice that no useful purpose would be served by separately indicating the quantity of gravel component and ordinary clay component since both the ordinary and gravel clay fall in Item 6 of the Schedule of the rules, for which the seigniorage fee is chargeable. The petitioner-company is required to submit its own account with regard to the material procured from hill slopes and tank beds, and an assurance is given in the show cause notice itself that the information, if any, furnished will be taken into consideration by the department. Such are the details mentioned in the show cause notice dated 26-9-2001.

30. The petitioner-company submitted a detailed explanation to the show cause notice dated 26-9-2001 on 8-10-2001. In the explanation, it had reiterated its contention that no seigniorage fee is to be levied on earth. All the filling materials utilised in the site levelling were tested in Andhra University, Geo-tech Engineering and classified as earth/soil as in the case of other similar works and approved by BHEL and allowed for filling. It is contended that no clay material is allowed to be used in the fill material. Most of the quantity is excavated from the existing tanks and only soil/earth is available in the tanks and no gravel or clay is existing. It is a mixture of various ingredients of Gravel/Clay/Sand/Silt and finally the same is classified as earth and is in accordance with the specifications incorporated in the agreement conditions. It is also contended that the petitioner-

company had already paid the amount to an extent of gravel borrowed from the Government land duly obtaining the necessary permits. There is no specific rate for the clay to be utilised as fill material. No seigniorage fee is leviable for the clay used as filled material. It is contended that "there is no finding by the department to the effect that the material used for filling in clay or some other attracting seigniorage fee (sic.). The company was never informed nor given an opportunity about the declaration of the filling material as clay. The whole procedure followed is in violation of principles of natural justice. The demand now made is unsustainable for the reasons stated....."

31. The Deputy Director of Mines and Geology having considered the explanation submitted by the petitioner-company to the notice dated 26-9-2001 on 8-10-2001 issued a fresh demand notice dated 29-12-2001. It is once again a very detailed order. In the said order it is inter alia observed that in spite of the several efforts made by the department, the authorities of BHEL were not insisting for documentary proof of payment of seigniorage fee for supply of material by the petitioner-company. There is a reference to the meeting convened by the Director of Mines and Geology, in which the petitioner-company and other sub-contractors as well as the main contractors have participated on 4-9-1999, in which it was specifically agreed upon by the sub-contractors including the petitioner-company to show the areas wherefrom they have excavated the material so as to determine the nomenclature by the Director of Mines and Geology, Visakhapatnam. In fact, there is no dispute about the procedure that was agreed upon by and between the parties for determining the nomenclature by the Deputy Director of Mines and Geology.

32. In the order, it is also noticed that the petitioner-company has shown the areas to the Deputy Director of Mines and Geology, Visakhapatnam in the month of December, 1999. The details of the areas and category of material and its classification arrived at by the Deputy Director of Mines and Geology, Visakhapatnam are enclosed in Annexure-I to the impugned order. The details of the areas from where the petitioner-company procured the material are noticed. It is held that the petitioner-company had excavated the material from tank beds only except in respect of Survey Nos.69, 173 and 418 of Rawada, 136 of Swayambuvaram and 1 of Parawada villages. These are hill areas and as per the inspection conducted all hill slopes contain gravel. In the result, the Deputy Director came to the conclusion that the petitioner-company had supplied a total quantity of 19,25,037 cubic meters from tank beds as well as from hill slopes.

33. While adverting to the contention raised in the explanation that the Department has not conducted any chemical analysis of the samples collected and whereas the Civil Engineering Department of Andhra University had certified that the material supplied is not fully gravel, it is observed by the competent authority that the material supplied by the petitioner-company is for filling purpose and not for industrial purpose. It is only when the minerals are used for industrial purpose, the suitability of mineral may have to be decided basing on

chemical characteristics of a particular mineral. Even the Geo Engineering Department of Andhra University did not do any chemical analysis of the samples, but has done only sieve analysis, which indicates only grain size of the material used. The department is not interested in finding the grain size of the material supplied by the petitioner-company. In the circumstances, the Geologists of the department physically verified the mineral consumed by the petitioner-company and has come to the conclusion that the ordinary clay and gravel have been consumed by the petitioner-company. The physical properties of the mineral consumed reveal the same.

34. In the said order it is also noted that the petitioner-company executed the work without obtaining the permits as per the provisions of the Rules.

35. The amounts already paid by the petitioner-company towards the seigniorage fee have been deducted and the details thereof are provided in the order. In the result, the respondents have reiterated their demand and held that the entire quantity of 19,25,203 cubic meters of filling material supplied by the petitioner-company to BHEL, for which they claim bill from BHEL, is seigniorable. It is categorically recorded that the entire material supplied by the petitioner-company is partly gravel and partly clay. It is observed that the material obtained from the hill slopes is gravel and the material obtained from the tank beds is ordinary clay.

36. While advertng to the contention that the reports of the Engineering Department of Andhra University were not taken into consideration, it is observed by the competent authority that it is the Geologist of Mines and Geology Department who is competent to decide about the nomenclature and nature of the mineral consumed by the petitioner-company.

37. It is also explained that the demand notice dated 25-5-2000 issued by the Deputy Director is on account of inadvertence.

38. In the result, it is held that the ordinary clay comes under the expression "any other material" specified under Item No. 6 of Schedule 10 of the Rules and hence if the ordinary clay is used as filling material, the same is seigniorable at the rate of Rs.10/- per cubic meter. If such ordinary clay is used for brick making it comes under item No. 8 of the Schedule prevailing at the relevant time.

39. While advertng to the contention that the department has not quantified the quantity of gravel or ordinary clay, it is observed that both the gravel and ordinary clay fall within the Item No. 6 of the Schedule and the same are seigniorable at the rate of Rs.10/- per cubic meter. It is specifically recorded that the petitioner-company had already dispatched the material containing both the gravel and ordinary clay, mixed during the site levelling work. Therefore, it is neither possible nor there is any necessity to separately quantify the gravel and ordinary clay.

40. Having adverted to all the relevant aspects including each and every

objection raised by the petitioner-company, the authority came to the conclusion that the petitioner-company is liable to pay the balance of Rs.10,96,45,630/-.

41. There is no procedure prescribed under the Rules for making any provisional assessment. There is also no procedure whatsoever for inviting objections, if any, in the matter of levy of seigniorage fee and demand thereof. However, in compliance with the directions of this Court and in order to ensure the compliance of principles of natural justice, the respondents herein provided adequate opportunity of being heard to the petitioner-company in order to arrive at a just and proper conclusion as to the total quantity of mineral consumed by the petitioner-company and also as to the nomenclature/character of the mineral and the seigniorage fee payable thereof. In fact, the department entered into an endless marathon correspondence with the petitioner-company. In our considered opinion, it was totally unnecessary.

42. The rules of natural justice are not the embodied rules and they cannot be imprisoned within the straight jacket of rigid formula. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the statutory authority is acting, the subject matter that is being dealt with, and so forth.

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held.....Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case." (See: A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

43. In the instant case, we are satisfied that at every step, opportunity has been provided and the department considered each and every objection raised by the petitioner-company. The authorities have acted in fair and reasonable manner. There is a categorical finding as to the total quantity of the mineral consumed by the petitioner-company and its features. The sites from where the petitioner-company is stated to have excavated the mineral are inspected. Necessary information is furnished to the petitioner-company on physical examination of the material used by it. The department found the same to be the mixture of gravel and ordinary clay. It is held to be not ordinary soil/earth.

44. There is no reason or justification to differ with the findings and conclusions reached by the department. The sheet anchor of the case of the petitioner-company is the report stated to have been issued by the Civil Engineering Department of Andhra University. In our considered opinion, such reports have no value. There is no procedure prescribed under the rules for sending the samples for testing by the laboratories. The test was conducted at the instance of the petitioner-company. Some of the reports which are made available for our perusal themselves reveal that the samples contain some percentage of gravel

and some percentage of sand and fines. Even the test results do not show that what has been consumed by the petitioner-company is only earth not containing any mineral. Andhra University test results merely certify that the samples are suitable for filling work. It is nobody's case that the material utilised by the petitioner-company is not suitable for filling work. The test results at the most may reveal that the material utilised by the petitioner-company is suitable for filling purpose. The said test results cannot be taken into consideration for any other purpose.

45. One more aspect remains to be mentioned is with regard to the contention that in the counter affidavit filed in W.P. No. 2271 of 1999 the then Assistant Director made a statement that the excavated material is earth. In the additional counter affidavit it is stated that it was a mistake. At the relevant time, the department had no precise knowledge of the locations where excavation was going on or the nature of the soil, which was being excavated. Much later in December, 1999 pursuant to a meeting between the various contractors and the concerned officials, during which it was decided that the locations of the excavation should be disclosed to the department, the petitioner-company had disclosed the details of the locations of the excavation. After such disclosure, the sites were inspected and the Geologists of the Department opined that the excavated material was not simple earth but gravel and clay. We do not find any reason not to accept the explanation, particularly for the reason that the Deputy Director from the beginning did not conduct himself in the matter befitting the office, which he was holding.

46. As is evident from the Schedule I of Rule 10 of the Rules, gravel/morram, shingle and any other filling material used for commercial purposes is seigniorable. The rules notified in G.O.Ms. No. 154, Industries and Commerce Department, dated 23-7-1996 with effect from 8-8-1996 are clear in this regard. The rules were subsequently amended in G.O.Ms. No. 155, dated 14-5-1999 with effect from 20-5-1999 by incorporating "Gravel, Morrum, Shingle and any other filling material except ordinary soil/earth". It is thus clear that the expression "any other filling material" includes ordinary clay if the same is used as filling material. What is exempted is ordinary soil/earth not containing any seigniorable mineral.

47. It is very well settled and needs no reiteration in our hands that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not exercise any appellate jurisdiction. We cannot sit in appeal over the detailed show cause notices and orders passed from time to time and substitute our own view for that of the authority concerned. Principles of natural justice have been complied with. Detailed enquiries have been held in a reasonable and fair manner. It is not a case where any mala fides have been attributed to any of the officers. The decision of the authority impugned in this writ petition cannot be characterised as *ultra vires*. The directions/orders issued by this Court from time to time have been complied with. The eternal correspondence between the

petitioner-company and respondents has to come to an end at some point of time. The same issue cannot be permitted to be agitated or re-agitated on one or other pretext.

48. The learned Senior Counsel, however, strenuously contends that there is no reason or decision to impose five times penalty over and above the normal seigniorage fee payable on the mineral utilised by the petitioner-company in the filling work. We do not find any merit in this submission. In the reply dated 8-10-2001 to the show cause notice dated 26-9-2001 the petitioner-company did not raise its little finger opposing the levy of penalty. We have already noticed the relevant rule in the connected writ petitions - W.P. No. 6916 of 2002, under which any person who uses or consumes or in possession of any mineral is liable to pay five times of the normal seigniorage fee as penalty in addition to normal seigniorage fee leviable under the Rules. The liability is absolute. On failure to produce the documentary proof in token of having paid the mineral revenue due to the Government by the person who used or consumed any mineral, he shall notwithstanding anything contained in sub-rule (1) of Rule 26 be liable to pay five times of the normal seigniorage fee as penalty. There is no discretion left in the hands of the authorities to collect the penalty less than five times of the normal seigniorage fee. This issue raised relating to levy of penalty is an after thought.

49. For the aforesaid reasons, we do not find any merit in this writ petition. The same shall accordingly stand dismissed. No order as to costs.