
(2002) 02 AP CK 0149
In the Andhra Pradesh High Court
Case No : WA No. 21 of 2001

Government of Andhra Pradesh

APPELLANT

Vs

Medicorp Technologies India Limited

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 26(3)

Citation : (2002) 2 ALD 792

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : Government Pleader, for Industries, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The Government of Andhra Pradesh and its authorities in the Department of Mines and Geology have preferred this writ appeal against the order of the learned single Judge dated 25-7-2000 made in WP No.27891 of 1998. The respondent herein filed the above writ petition for the following relief:

".....the High Court will be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of mandamus declaring the Rule 26(3X") of the A.P. Minor Mineral Concession Rules, 1966 as illegal, arbitrary, violative of Article 14 of the Constitution of India as well as A.P. Mines and Minerals (Regulation and Development) Act and consequently direct the respondents to desist from levying and collecting any amount pursuant to the demand notice N0.752/Q/97 dated 16-9-1998."

The challenge to the validity of Rule 26(3Xii) of A.P. Mineral Concession Rules, 1966 (for short, the "Rules") should fail in view of the Full Bench decision of this Court in S. Venkateswara Rao v. Singareni Collieries Company Limited represented by its Managing Director, Kothagudem L. Venkateswara Rao and Others Vs. Singareni Collieries Company Ltd. and Others, In Rule which

upheld.>< 26(3Xii) validity> 2. The background facts leading to the filing of the writ petition be noted briefly as under: The writ petitioner-company is a company incorporated under the Companies Act and it is engaged in the production of medicines. According to the petitioner company, in terms of the agreements, the contractors should supply all construction materials for the purpose of construction of the factory. The Engineering firm has to identify sources, suppliers, vendors for all construction materials required for the construction. In pursuance of the contract, the Engineering firm has identified the suppliers and the petitioner-company placed orders on the following suppliers.

1. Mr. D. Ravinder, 5-26, Rudraram, Patancheru Mandal, Medak District 502 329.
2. Mr. Y. Govind Rajulu, 6-75/1, Chandanagar, Hyderabad.
3. J. Thimmaiah, Metal Industries, S.No.343/ Ammenpur village, Sangareddy Taluk, Medak District.
4. Eniv Building Material Suppliers, Plot No.142, behind K.N.A Wood Works, Mayuri Nagar, Ashok Nagar, Hyderabad 500 032.
5. L. Gopal Reddy, Village Pashyamyaram, Isnapur, Medak District.
6. Ashok Bricks Company, H.No.1-19, Pocharam village, Patancheru Mandal, Medak District.
7. Sri Krishna High Polishing Industries, Opposite St. Mary's High School, CCI Road, Tandur 501 141.
8. Vijaya Stone Quarries, Tandur, Admn. Office 6-1-1063/D/5, Opp. R.R. District Collector's Office, Raj Bhavan Road, Hyderabad 500 004.

Accordingly, purchases were made from the suppliers as identified by the firm and construction was made to the extent of 18000 sq. meters out of the total extent of 24172-38 sq. meters of land. When the matter stood thus, a notice dated 9-1-1997 was issued by the Assistant Director of Mines and Geology, Sanga Reddy, Medak District, the 4th respondent in the writ petition, to the petitioner-company directing it to furnish details of the minor minerals consumed by it and the payments made to various suppliers. In response to that notice, the petitioner company submitted its reply on 29-1-1-1997 setting out the quantum of minerals consumed and the payments made to the suppliers through cheques. However, the 4th respondent, passed order on 16-9-1998 directing the petitioner-company to pay a sum of Rs.37,53,548/-towards seigniorage fee and five times penalty. Being aggrieved by the said order of the 4th respondent, the petitioner-company filed the writ petition for the relief noticed above.

3. According to the department, the seigniorage fee and penalty for the default committed by petitioner-company was claimed from the petitioner-company in terms of Rule 26(3)(ii) of the Rules.

4. The learned single Judge, on consideration of Rule 26(3)(ii) of the Rules, has

opined that Rule 26 is only an enabling provision to assess the seigniorage fee and it is not that in each and every case, the consumer himself should pay the seigniorage fee and it is permissible for him/it, in law, to shift the burden of payment of seigniorage fee to the third parties, like the suppliers in the instant case, and so opining, allowed the writ petition and quashed the impugned order of the 4th respondent reserving liberty to the State authorities for taking appropriate action against the suppliers. Hence this writ appeal by the State and its authorities.

5. The learned Government Pleader for Industries and Commerce would submit that since the petitioner-company had failed to produce the documentary proof in token of having paid the mineral revenue due to the Government, as contemplated under Rule 26(3)(ii) of the Rules, the 4th respondent was justified in raising the demand against the petitioner-company. The learned Government Pleader would further submit that the petitioner-company did not produce any documentary proof to show that at least the suppliers paid the mineral revenue due to the Government.

6. On the other hand, Sri P. Venugopal, learned Counsel appearing for the writ petitioner, would contend that the petitioner-company has produced all necessary documents, including the contracts entered into with the suppliers and it is the liability of the suppliers to pay the mineral revenue due to the Government and not the liability of the petitioner-company and, therefore, no exception can be taken to the order of the learned single Judge.

7. Rule 26 of the Rules reads as follows:

"26. Penalty for unauthorised quarrying :--

(1) If any person carries on quarrying operations or transports minor minerals in contravention of these rules, he shall be liable to pay as penalty such enhanced seigniorage fee together with assessments as may be imposed by an officer nominated by the Director of Mines and Geology.

(2) Whenever any person raises or transports minor minerals without any lawful authority, such minerals may be seized by an officer nominated by the Director of Mines and Geology in this behalf in addition to the imposition of the penalty under Sub-rule (1).

Provided that in no case, the penalty shall exceed ten times the normal seigniorage fee and the lease or permit already granted may, at the discretion of the Deputy Director, be liable to be terminated or cancelled.

(3) (i) For the purpose of ascertaining the position of payment of Mineral Revenue due to the Government or for any other purpose under these rules, the person authorised under Sub-rule (2) may-

(a) enter and inspect any premises;

(b) survey and take measurements;

- (c) weigh, measure or take measurements of stocks of minerals;
 - (d) examine any document, book, register or record in the possession or power of any person having the control of or connected with any mineral including the processed mineral and place marks of identification thereon and take extracts from or make copies of such document, book, register or record, and
 - (e) order the production of such document, book, register, record as is referred to in clause (d).
- (ii) if no documentary proof is produced in token of having paid the mineral revenue due to the Government by any person who used or consumed or in possession of any mineral including the processed mineral, he shall notwithstanding anything contained in Sub-rule (1) be liable to pay five times of the normal seigniorage fee as penalty in addition to normal seigniorage fee leviable under the rules.

Explanation :--It shall be competent to the officer nominated by the Director of Mines and Geology to determine the question whether quarrying operation or transportation of minerals are carried or not within the meaning of this rule."

8. Rule 26 deals with unauthorised quarrying. Sub-rule (3) of Rule 26 provides for inspection, entry of any premises for the purpose of ascertaining the position of payment of mineral revenue due to the Government and for any other purpose under the rules. Clause (ii) of Sub-rule (3) of Rule 26 provides that if a person who uses or consumes or is in possession of any minor mineral, including the processed mineral, fails to produce documentary proof in token of payment of mineral revenue due to the Government at the time of inspection, the inspecting authority is empowered to impose the penalty of five times of the normal seigniorage fee in addition to normal seigniorage fee leviable under the rules. Clause (ii) of Sub-rule (3) of Rule 26 in unmistakable terms imposes the duty to produce documentary proof on the person who uses or consumes or in possession of any mineral. It is trite to state that in the instant case, when inspection was done, the petitioner-company was in possession of the mineral, because, even according to the petitioner, by that time the construction of the factory premises was completed. Therefore, the primary liability to produce the necessary documentary proof in token of payment of mineral revenue due to the Government in respect of the minerals consumed/used in the construction of the factory was on the petitioner-company. No doubt, as rightly opined by the learned single Judge, the liability of payment of mineral revenue to the Government might be shifted to the suppliers also. However, the question to be considered and decided in the present writ proceeding is not the question whether the liability to pay the mineral revenue could validly be shifted to the suppliers by the petitioner-company or not, but the question is whether any documentary proof was produced by the petitioner-company in token of payment of mineral revenue due to the Government whether it paid or the suppliers paid. Mere production of the agreements entered into with the suppliers would not be

proof, though the petitioner contends that those agreements themselves prove payment of the mineral revenue in favour of the State. Be that as it may, the question whether the mineral revenue is paid to the State Government in respect of the mineral used or consumed by the petitioner-company is a question of fact and since the petitioner-company has pleaded in the writ petition that as per the terms of the contract, the mineral revenue has to be paid by the suppliers, it ought to have impleaded those suppliers and that would have enabled the Court to decide the question whether actually mineral revenue is paid or not.

9. In that view of the matter, we think that ends of justice would be met by permitting the petitioner-company to produce the necessary documentary proof as envisaged under Rule 26(3)(ii) of the Rules and to direct the 4th respondent in the writ petition to decide the liability of the petitioner-company afresh on consideration of such proof and after giving a fair opportunity of being heard to all the parties, including the suppliers noticed above.

10. In the result and for the foregoing reasons, we allow this writ appeal and set aside the order of the learned single Judge dated 25-7-2000. We dispose of the writ petition directing the 4th respondent to consider the documentary proof already produced by the petitioner-company and that may be produced by the petitioner-company or the suppliers noticed above within a period of six (6) weeks from today and pass appropriate order after giving a fair opportunity of being heard to all the parties. We further direct that the respondent-authorities are directed not to take any coercive steps to recover the outstanding dues till the above direction is carried out. No costs.