

(2003) 04 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2208 of 2003

K. Sambasiva Rao

APPELLANT

Vs

District Level Committee and Others

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 9B, 9C, 9D, 9E, 9F
Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A, 4A(2)

Citation : (2003) 3 ALD 454 : (2003) 3 ALT 808 : (2003) 2 APLJ 1

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; N. Shobha and K.S. Murthy, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This writ petition is filed seeking a writ of Mandamus to declare the order of the 3rd respondent in ROC No. 41637 2002/1 dated 1.2.2003 as arbitrary, illegal and contrary to Section 4-A(2) and (3) of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder.

2. The petitioner is the lessee in respect of Jayanthipuram/Ravirala Sand Reach. He was the highest bidder in the auction and was granted the lease for a period of two years commencing from 28.7.2001. The first year lease period expired on 28.7.2002. The petitioner states that due to his ill-health he could not pay the second year lease amount in time and that his application for extension of time has been considered by the 1st respondent-District Level Committee, Krishna District and in the meeting held on 25.10.2002 it was resolved to extend the lease period of the petitioner up to 28.7.2003 while condoning the delay in payment of the lease amount for the second year. In pursuance thereof the petitioner paid the lease amount for the second year and the period of lease was extended and to that effect a registered lease deed was executed by the 3rd respondent for the period from 28.7.2002 to 28.7.2003. In pursuance thereof a

work order was also issued in favour of the petitioner by the 3rd respondent by proceedings dated 7.1.2003.

3. To that extent there is no dispute about the facts. However, the cause of action for the present writ petition has arisen out of the events that took place thereafter which culminated in termination of the lease of the petitioner under the impugned proceedings dated 1.2.2003.

4. A show-cause notice dated 28.7.2002 was issued by the 3rd respondent calling upon the petitioner to explain why the lease for the second year shall not be cancelled under Rule 9-B and Rule 9-J of the Rules issued under G.O. Ms. No. 1 dated 1.1.2002 as well as Clause 7(2) of the agreement, on the ground that there is a likelihood of fetching higher amount if the said Reach is put to public auction. The petitioner submitted his explanation on 2.12.2002 disputing the allegations in the show-cause notice and contending inter alia that the 3rd respondent is not competent to initiate the proceedings for cancellation. Thereafter the impugned proceedings dated 1.2.2003 were issued by the 3rd respondent cancelling the lease of the petitioner for the second lease year as resolved by the District Level Committee and directing the petitioner to stop sand quarrying in the Reach forthwith.

5. The learned Counsel for the petitioner Sri B. Adinarayana Rao, while referring to the various provisions under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder, contended that u/s 4-A(2) of the Act the State Government alone is competent to pass order prematurely terminating the mining lease for the reasons specified therein, and therefore, the impugned order is illegal and without jurisdiction. The further contention of the learned Counsel is that even assuming that under the Rules made under the Act as amended by G.O. Ms. No. 1 dated 1.1.2001, the 1st respondent - District Level Committee, is competent to cancel the lease, the order impugned passed by the 3rd respondent-District Panchayat Officer, which was preceded by a show-cause notice issued by the same authority, is totally without jurisdiction and cannot be sustained.

6. Without prejudice to the above two contentions, the learned Counsel also submitted that the impugned order is vitiated and liable to be set aside since the same was passed without considering explanation offered by the petitioner. Yet another contention raised by the learned Counsel is that no provision under the Act or the Rules empowers the respondents to cancel the lease on the ground that a re-auction would fetch a higher lease amount and that the said reason is totally contrary to the scheme of the Act and the Rules made thereunder and on that ground alone the impugned proceedings are liable to be set aside.

7. On the other hand, the learned Additional Advocate-General appearing for the respondents 1 to 3 submitted that the power conferred u/s 4-A(2) of the Act is not exhaustive and that the lease can also be cancelled by following the procedure provided under the terms of the lease. The learned Additional

Advocate-General also submitted that the 3rd respondent being a Member-Convener of the District Level Committee, is competent to initiate the proceedings for cancellation of lease and at any rate since the impugned order being only a consequential order communicating the resolution of the District Level Committee to cancel the lease of the petitioner, it cannot be said to be without jurisdiction. He further submitted that the District Level Committee in its meeting held on 30.1.2003 considered the explanation offered by the petitioner and taking into consideration the larger public interest and particularly with a view to maximize the earnings of the local bodies resolved that the lease in favour of the petitioner for the second year shall be cancelled and there is absolutely no justifiable reason to interfere with the said decision taken by the competent authority.

8. It is also pertinent to note that one Ch. Nagendram, who is an elected Member of MPTC got herself impleaded as respondent No. 4. Sri K.S. Murthy, learned Counsel appearing for the respondent No. 4 submitted that the first year lease of the petitioner came to an end on 28.7.2002 and thereafter the District Level Committee by resolution dated 6.8.2002 decided to put the sand bearing area to auction. However, the petitioner subsequently made a representation for extension of the lease for the second year and obtained favourable orders for a paltry sum of Rs. 57,000/-whereas the present rate is more than Rs. 10.00 lakhs. The learned Counsel also contended that since Jayanthipuram/Ravirala Sand Reach was not cleared by the River Conservator, quarrying is not permissible and at any rate since the loss of revenue to the Mandal Praja Parishad and Gram Panchayat is heavy due to granting of extension of lease, the impugned order of cancellation is justified and no interference is warranted.

9. Smt. N, Shobha, the learned Counsel appearing for the Gram Panchayat, Jayanthipuram who got impleaded as respondent No. 5 submitted that as a matter of fact the District Level Committee in its meeting held on 27.8.2002 while resolving to delete the Reaches fetching less than Rs. 2.00 lakhs from the public auction decided to handover the same to the Gram Panchayat. She contended that the auction held for the adjacent Reaches fetched between Rs. 12.00 to 30.00 lakhs and there was an offer of Rs. 30.00 lakhs for the Jayanthipuram/Ravirala Reach also and therefore, the Gram Panchayat made a representation to put the same to auction on par with other Reaches. It is also contended that the request for extension of the lease made by the petitioner three months after the expiry of the first year lease was only an after thought, not bona fide and that the District Panchayat Officer in collusion with the writ petitioner managed to get a resolution in favour of the writ petitioner granting extension of lease for the second year. The learned Counsel vehemently contended that the impugned order of cancellation of lease is in accordance with the statutory provisions and particularly keeping in view the interest of the Gram Panchayat, which is one of the beneficiaries of the Reach, the said order cannot be interfered with.

10. It is relevant to note that in the counter-affidavit filed on behalf of the respondents 1 to 3 it is stated that the knocked down amount for Jayanthipuram/Ravirala Sand Reach at Rs. 57,500/- is very meager compared to the bids received for the nearby Sand Reaches and therefore the District Level Committee in exercise of the powers conferred under the Rules and also under the terms and conditions of the agreement issued a show cause notice and considering the reply thereof, decided to terminate the lease which is in accordance with law. It is further stated that the respondents received number of complaints and various news items appeared in the press stating that Jayanthipuram/Ravirala Sand Reaches will fetch more income if put to public auction. That apart, the Sarpanch, Jayanthipuram Gram Panchayat and MPTC member made representations that the said Reach will receive income of not less than Rs. 10.00 lakhs. Having regard to the aforesaid facts the District Level Committee came to the conclusion that the knocked down amount of Rs. 57,500/- is not satisfactory and accordingly resolved to cancel the lease in favour of the petitioner.

11. On the basis of the above said set of facts before adverting to the rival contentions raised by the parties, it is necessary to refer to the relevant statutory provisions in brief.

12. The Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957), hereinafter referred to as the Act, has been enacted to provide for regulation of the mines and development of minerals under the control of the Union. Section 4 of the Act provides that no person shall undertake any prospecting or mining operations in any area except under and in accordance with the terms and conditions of a prospecting licence or as the case may be a mining lease granted under the Act and the Rules made thereunder. Section 4-A(2) provides for termination of prospecting licences or mining leases prematurely.

13. In exercise of powers conferred by Sub-section (1) of Section 15 of the Act, the State Government made A.P. Minor Mineral Concession Rules, 1966 (for short "the Rules"). So far as quarry lease for sand is concerned, Rule 9-B to Rule 9-X as substituted under G.O. Ms. No. 1 Industries and Commerce (MI) dated 1.1.2001 provide for the procedure in detail.

14. Rule 9-B(1) provides that all the sand bearing areas in the State shall be leased out by sealed tender-cum-public auction, Reach or village-wise wherever applicable by Mandal Revenue Officer, or Revenue Divisional Officer or Joint Collector for a specified period in any case not more than two years with an yearly enhancement of 10% of the knocked down amount and subject to the conditions prescribed in the notice of sealed tender-cum-public auction as specified in Rule 9-C.

15. Rule 9-B(2) specified the constitution of the District Level Committee and as per Rule 9-B(2i)(b) the District Level Committee shall be the authority competent to decide on any matter or problem arising during the course of implementation

of the Rules. Rules 9-C to 9-H prescribed the procedure for conducting the public auction and under Rule 9-H(2) the successful bidder on receipt of the order of confirmation shall remit the knocked down amount as stated thereunder and execute the lease deed in Form G-1 and that the lease period shall commence with effect from the date of the execution of the lease deed.

16. It is pertinent to note that Form G-1, which prescribed the form of sand lease agreement to private persons contains different terms and conditions. As per Clause 6(XVII) of the terms and conditions, the lease may be terminated for violation of conditions of lease as mentioned in Rules 9-B to 9-X. Under Clause 7 (II) of the terms and conditions, the District Level Committee reserves the right to cancel the quarry lease granted and executed under the Rules after giving a previous notice. It is clear that the above clauses stipulated under Form-G2 form part of the statutory rules. On a combined reading of the above Rules it is clear that the lease for the sand quarrying can be cancelled by the District Level Committee for violation of the conditions of lease and after giving a previous notice to the lessee.

17. So far as the first contention of the learned Counsel for the petitioner that right to terminate the lease prematurely is vested only with the State Government u/s 4-A(2) of the Central Act, it is true that Section 4-A(2) empowers the State Government to terminate the prospecting licence or mining lease prematurely after consultation with the Central Government where it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such other purposes as it deems fit. However, as rightly contended by the learned Addl. Advocate-General, Section 4-A(2) is not exhaustive. On a careful analysis of the scheme of the Act and the Rules, it is clear that apart from the powers conferred on the State Government u/s 4-A(2) for premature termination of lease on the grounds enumerated thereunder, the mining lease can also be cancelled by following the procedure provided under the Statutory Rules and the terms of the lease. So far as sand quarrying is concerned on a combined reading of Rules 9-B to X and the terms and conditions of the lease as substituted under G.O. Ms. No. 1, there can be no doubt that such a power is vested with the District Level Committee. In the instant case the impugned order of cancellation was passed invoking the powers under the Rules. Therefore, I do not find any "merit" in the contention that the impugned order is contrary to Section 4A(2) of the Act.

18. The next contention of the learned Counsel for the petitioner is that the impugned proceedings of cancellation is without jurisdiction on the ground that the 3rd respondent is only a Member-Convener of the District Level Committee and he cannot usurp the power conferred on the District Level Committee, I am unable to agree with the said contention. As expressed above, under the Rules as amended by G.O. Ms. No. 1 dated 11.1.2001, the District Level Committee is the

competent authority to either to grant or to cancel or to take any decision with regard to the sand quarrying lease. It is true that the impugned order has been issued by the 3rd respondent who is a Member-Convener of District Level Committee. However, a perusal of the impugned proceedings shows that it is nothing but a communication of the decision of the District Level Committee as resolved in its meeting held on 30.1.2003. There is a specific reference to the resolution of the District Level Committee and the substance of the resolution has been clearly stated in the impugned order. Therefore, it cannot be said that the impugned order of cancellation was passed by the 3rd respondent on his own. As rightly contended by the learned Addl. Advocate General it is only a consequential order communicating the decision of the District Level Committee. As a matter of fact the record shows that all the earlier proceedings relating to the granting of lease, extension and etc., were issued only by the 3rd respondent, who is the Member-Convener of the District Level Committee. Therefore the impugned order cannot be said to be without jurisdiction.

19. However, I find force in the next contention of the learned Counsel for the petitioner that the impugned order is vitiated by non-application of mind to the explanation offered by the petitioner and particularly for the reason that the ground on which the lease was cancelled is contrary to the scheme of the Act and the Rules and therefore the entire action of the respondents 1 to 3 is liable to be declared as arbitrary and illegal.

20. I have called for the record relating to the impugned proceedings. A perusal of the minutes of the District Level Committee dated 30.1.2003 shows that the issue relating to the cancellation of lease of the petitioner was included in the Agenda as item No. 5. A detailed note was put up incorporating all the objections raised in the explanation submitted by the petitioner in reply to the show-cause notice. However, the resolution of the District Level Committee does not reflect even remotely the consideration of the objections raised by the petitioner. In the resolution there is a specific reference to the representation of the Member, MPTC, Jayanthipuram stating that it would fetch much higher amount if the Reach is put to public auction. The committee appears to have also relied upon the way bills issued to the petitioner during the first year of the lease and arrived at a conclusion that since he already had an income of Rs. 7,02,000/", the leasehold rights for the second year shall be cancelled and it shall be put to public auction to avoid financial loss to the local bodies - MPTC and Gram Panchayat.

21. As a matter of fact the petitioner in his explanation raised a specific objection that no provision under the Act or the Rules empowers cancellation of the lease, except for violation of the Act or Rules or conditions of lease. It is also pertinent to note that he has categorically stated that he had spent huge amounts for strengthening the path-way for transporting sand and also towards labour charges and that the averment in the show-cause notice that the re-auction would fetch Rs. 10.00 and Rs. 12.00 lakhs is highly exaggerated and without any

basis. It is true that the District Level Committee while passing a resolution is not expected to assign the reasons in detail, but the fact that the decision was taken by the District Level Committee merely accepting the representation made by a member of the MPTC and not referring to any one of the objections raised by the petitioner, particularly the objection that the lease cannot be terminated on the grounds stated in the show-cause notice, shows total non-application of mind to the issue in question. It is also relevant to note that in the show-cause notice it was never put to the petitioner that he had an income of Rs. 7,02,000/- in the first year of lease and it is not known whether the figures shown in the way bills can be taken as income of the lessee.

22. In the totality of the facts and circumstances the action of the District Level Committee appears to be rather arbitrary. In the absence of any material to show that the District Level Committee while passing the resolution, applied its mind to any one of the relevant factors, it is inevitable to conclude that the District Level Committee failed to perform its statutory functions in a manner, which would appear to be fair, reasonable and just

23. It is also pertinent to note that under Rule 9-B(2)(b) the District Level Committee is declared as the competent authority to decide on any matter or problem arising during the course of implementation of the Rules. However, I am unable to hold that the said Rule empowers the District Level Committee to cancel the lease, which has been validly entered into with an individual, following the procedure contemplated under the Statutory Rules. Similarly, Rule 9-J which provides for a situation for cancellation of auction where the competent authority is not satisfied with the publicity, participation and the amount knocked down etc., governs cancellation of the auction for the reasons provided thereunder but it has nothing to do with post-confirmation stage of the auction and in my considered opinion the said power cannot be invoked for premature termination of the lease.

24. As expressed above, the power to terminate the lease prematurely by the District Level Committee can be traced only to Clause 7(11) read with Clause 6(XVII) of the terms and conditions prescribed under Form G-1 - sand lease agreement to private persons which forms part of the Statutory Rules. The termination of lease is permissible under the said clauses only for violation of the conditions of lease after giving a previous notice to the lessee. In the instant case, the only reason stated in the show-cause notice dated 27.11.2002 is that on the basis of the resolution passed by the Jayanthipuram Gram Panchayat dated 26.11.2002 and the letter of the Member of MPTC, Jayanthipuram dated 16.11.2002, it is found that the grant of lease for the 2nd year in favour of the petitioner resulted in huge financial loss to the local bodies and that if the leasehold rights are put to public auction it would fetch much higher revenue to the extent of Rs. 30.00 lakhs. There is absolutely no allegation of violation of any one of the conditions of the lease. A perusal of the impugned order of cancellation as well as the resolution of the District Level Committee dated

30.1.2003 makes it very clear that the cancellation is not on the ground of violation of terms of lease, but only on the ground that if the Reach is put to public auction it would fetch much higher revenue.

25. The learned Counsel for the petitioner while contending that cancellation of lease on the said ground is not permissible under any one of the provisions of the Act or the Rules, placed reliance upon a decision of the Supreme Court in *Beg Raj Singh Vs. State of U.P. and Others*, wherein it was observed that merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.

26. In the instant case, the leasehold rights for Jayanthipuram/Ravirala Reach was put to public auction in terms of Rule 9-B(1). The petitioner was admittedly the highest bidder and he was granted a lease for a period of two years commencing from 28.7.2001. As per the procedure prescribed under G.O. Ms. No. 1 dated 1.1.2001 the lessee shall have to pay the knocked down amount together with 10% enhanced fee for the purpose of the renewal of the lease for the 2nd year on or before 10 days before the expiry of the 1st year lease period. In the event of any delay in payment of the amount the said delay can be condoned by the Joint Collector and where the delay is beyond the 1st year lease period the same can be condoned by the District Level Committee. It is true that the petitioner failed to pay the second year lease amount within the first year lease period, however, on a representation made by him thereafter seeking extension the District Level Committee in its meeting held on 25.10.2002 resolved to extend the lease period for the second year up to 28.7.2003 by condoning the delay in payment of the second year's lease rent. In pursuance thereof the petitioner paid the required lease amount and the lease was extended and a registered lease deed for the period from 28.7.2002 to 28.7.2003 was also executed by the 3rd respondent and work orders were issued. It is also brought to my notice that the MPTC member who got herself impleaded as respondent No. 4 to this writ petition, earlier filed Writ Petition No. 23126/2002 challenging the extension of lease in favour of the petitioner, but this Court refused to suspend the said order pending the writ petition. Therefore, I do not find any force in the several contentions raised by the impleaded respondents 4 and 5 as to the validity of the extension of lease in favour of the petitioner. When the extension of lease for the second year was granted by the competent authority following due process of law and an agreement to that effect has also been executed in his favour certainly the petitioner acquired a right for quarrying sand for the second year and the cancellation of such a lease is permissible only as provided under the statute. On a careful consideration of the entire scheme of the Act and the Rules, I am of the view that the action of the 1st respondent in terminating the lease prematurely only on the ground that the State would fetch higher revenue if it is put to public auction is impermissible and cannot be sustained.

27. The learned Addl. Advocate-General placed reliance upon the decision of the Supreme Court in *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , and contended that since the relief sought is nothing but specific performance of lease agreement and particularly in view of the fact that larger public interest is involved the interference of this Court under Article 226 is not warranted. In the said case the Supreme Court while dealing with a question relating to award of contract by the State and its instrumentalities held that the State can choose its own method to arrive at a decision. It is also held that though the decision is not amenable to judicial review the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The learned Addl. Advocate-General placed much reliance upon the following observations made by the Apex Court.

"The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

28. The ratio laid down by the Apex Court in the said case does not attract to the facts and circumstances of the present case. In the instant case the lease was granted in favour of the petitioner and an agreement was already entered into. The question involved in the case on hand relates to the correctness of cancellation of the lease and whether the power to cancel has been exercised by the respondents bona fide and for the reasons permissible under the statute. The facts are clearly distinguishable and in my considered opinion the ratio laid down in *Air India Ltd. v. Cochin International Airport Ltd*, (supra) has no application to the case on hand.

29. For the reasons stated above, I hold that the impugned order is arbitrary and illegal and the same is accordingly set aside.

30. In the result the writ petition is allowed. No costs.