

(2004) 04 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4040 of 2004

Kolli Butchi Koteswara Rao

APPELLANT

Vs

District Level Committee and Others

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 9B, 9L
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2004) 3 ALD 652 : (2004) 3 ALT 822

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : N. Shoba, for the Appellant; Additional Advocate-General for Respondent Nos. 1 and 2 and Ravishanker Jandhyala, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, who is a Sand Contractor, has filed this writ petition praying for the following relief:

To issue an order or writ, one in the nature of writ of mandamus, declaring the action of Respondent Nos. 1 and 2 in not putting Pulligadda Sand Reach No. II of Pulligadda Village, Avanigadda Manual, Krishna District, for public auction for issuance of temporary permits and granting temporary permits continuously to Respondent No. 3 from time to time as illegal, arbitrary and contrary to Rule 9L of the A.P. Minor Mineral Concession Rules, 1966 and consequently call for the records and direct Respondent Nos. 1 and 2 to put Pulligadda Sand Reach No. II, Pulligadda Village, Avanigadda Mandal, Krishna District, for public auction for quarrying sand for one year or issuance of temporary permits and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Pursuant to a Tender Notification bearing No. 1301/2003 issued on 13-8-2003,

for leasing out Pulligadda Sand Reach Non by sealed tender-cum-public auction for a period of 15 days, it is the case of the petitioner that Respondent No. 3, who was the highest bidder in the auction, was granted temporary permit on 4-9-2003 valid from 8-9-2002 up to 19-9-2003. Thereafter, it is the case of the petitioner that Respondent No. 2 instead of inviting tenders for leasing out and granting temporary permits, went on granting temporary permits in succession in favour of Respondent No. 3, and the last such temporary permit was granted on 26-2-2004 valid upto 10-3-2004. Assailing the action of Respondent No. 2, in granting temporary permits to Respondent No.3 in succession, without putting the Reach in question to auction by way of tender-cum-public auction, as illegal and arbitrary, the petitioner filed the present writ petition. It is the case of the petitioner that there is no provision either in the A.P. Minor Mineral Concession Rules, 1966 (for short "the Rules") or in the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Act") which invests power with the respondents to grant temporary permits in succession only to one person without conducting any auction.

3. Heard the learned Counsel for the petitioner and the learned Additional Advocate-General on behalf of Government Pleader for Panchayat Raj for Respondent Nos. 1 and 2 and the learned Counsel for Respondent No. 3.

4. The learned Counsel for the petitioner submits that pursuant to the Tender Notification dated 13-8-2003, issued for leasing out the Reach in question, Respondent No. 3, who was the highest bidder, was granted temporary permit for a period of 15 days by Respondent No. 2. After expiry of the said period, Respondent No. 2 instead of putting the Reach to public auction, is granting temporary permits to Respondent No. 3 in succession, which is illegal and arbitrary. She submits that as per Rule 9L of the Rules, in respect of areas which are not leased out by sealed tender-cum-public auction, the District Level Committee shall make alternative arrangements for quarrying sand by way of temporary permits for periods not exceeding 15 days, and there is no provision either in the Act or in the Rules which permits Respondent Nos. 1 and 2 to grant temporary permits to one single individual in succession. She submits that if the Reach in question is put to public auction, it would fetch much higher amounts than what Respondent No. 3 is paying at present. She submitted that the action of Respondent Nos. 1 and 2 in not putting the Reach in question to public auction and granting temporary permits to one single individual in succession, is contrary to the provisions of the Act and the Rules framed thereunder, and prayed that the action of Respondent Nos. 1 and 2 in granting temporary permits to Respondent No. 3 in succession, be declared as illegal and arbitrary and consequently direction be given to Respondent Nos. 1 and 2 to put the Reach in question to public auction.

5. The learned Additional Advocate-General appearing on behalf of Respondent Nos. 1 and 2 was fair in admitting that grant of temporary permits for quarrying sand should be only by way of sealed tenders-cum-public auction, and cannot be

granted to one single individual in succession. He submitted that Respondent No. 3 after obtaining temporary permits, approached the Senior Civil Judge, Avanigadda, in O.S. No. 93 of 2003 and obtained interim orders in I.A. No. 620 of 2003 on 13-11-2003, against the Respondents therein, and in view of the said interim order, Respondent Nos. 1 and 2 are unable to put the Reach in question to public auction. He submitted that steps are being taken by Respondent Nos. 1 and 2 to get the interim order vacated.

6. Respondent No. 3 filed counter. The learned Counsel representing Respondent No. 3 while reiterating the averments made in the counter submitted that the petitioner who is a rival contender has no locus standi to file the writ petition. Respondent No. 3 is being granted leases periodically for every 15 days, and by virtue of the said leases, he is carrying on the quarrying operations. Respondent No. 3 is being granted leases for every 15 days in terms of the proviso appended to Rule 9L of the Rules, which empowers the Government to continue the leases on payment of proportionate amount with 10% enhancement. He denied the contention of the petitioner that the Reach in question if put to auction, would fetch higher amounts than what Respondent No. 3 is presently paying. He submitted that when Respondents tried to interfere with his passage, he filed the suit and obtained interim injunction, and if the petitioner is aggrieved by any orders passed therein, he has to get himself impleaded in the said suit, and he certainly cannot file the present writ petition. He thus prayed for dismissal of the writ petition.

7. In the light of the factual environment stated above, the only question that arises for consideration in this writ petition is whether the action of Respondent Nos. 1 and 2 in granting temporary permits in favour of Respondent No. 3 should be held to be illegal and arbitrary, and if so, whether directions should follow to Respondent Nos. 1 and 2 to lease out the Reach in question by sealed tender-cum-public auction?

8. In order to consider this question, a brief reference may be made to the relevant provisions, governing the grant of temporary permits in respect of sand quarries.

9. Be it noted that the Government in exercise of the powers conferred upon them by Sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, framed Rules in G.O. Ms. No. 1172, Industries and Commerce Department, dated 4-9-1967 for the regulation of miner mineral. While so, by reason of the orders issued in G.O. Ms. No. 1, Industries and Commerce (MI) Department, dated 1-1-2001, the Government issued Notification in respect of the amendment made to Rule 9 of A.P. Minor Mineral Concession Rules 1966, contemplating procedure for regulation and conduct of auction of in the entire State in relation to sand bearing areas. As per Rule 9-B of the Rules 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. Rule 9-L of the Rules, which is relevant for the purpose reads thus:

In case of the areas which are not leased out by sealed tender-cum-public auction and new area, the District Level Committee shall make alternative arrangements for quarrying sand in order to protect monetary loss to the Governments, the District Level Committee for issue of temporary permits shall make such arrangements by the concerned District Panchayat Officers for a period not exceeding 15 days. All the participants shall put their respective bids in a secured box with proper date and time and venue. At the end of the prescribed time the box shall be opened by the Committee and highest bidder will be given the confirmation orders for temporary permits.

Provided that in case the lease expires the District Panchayat Officer may permit the earlier lessee to continue the quarrying operation on payment of proportionate amount with 10% enhancement which should not exceed 60 days. If the earlier lessee does not come forward to continue the quarrying operations, the District Panchayat Officer may regulate the quarrying by following the above procedure.

Provided further that the Government may for valid reasons continue the same for more than 60 days.

10. A plain reading of the Rule 9-L would disclose that in respect of new areas or areas which are not leased out by sealed tender-cum-public auction, as is envisaged by Rule 9-B of the Rules, the District Level Committee in order to protect monetary loss to the Government, is empowered to make alternative arrangements in consultation with the District Panchayat Officer concerned for issue of temporary permits for period not exceeding 15 days, and such grant of temporary permits shall only be through bids and the highest bidder in the bids shall be given the temporary permit. After the expiry of the said 15 days lease period, in terms of the proviso appended to Rule 9-L, the District Panchayat Officer, is permitted to continue quarrying operations provided the lessee pays proportionate amount with 10% enhancement, and after the expiry of the 60 days period, in terms of the further proviso, the Government may for valid reasons extend the lease beyond the 60 days period. By an analysis of Rule 9-L it becomes clear that any extension of lease beyond the period of 15 days, can be done by the District Panchayat Officer upon the lessee paying proportionate amount with 10% enhancement, up to a period of 60 days, and beyond the 60 days period the Government alone and not the District Panchayat Officer is invested with the power to extend the lease period, and such extension of lease period beyond 60 days shall be done only by the Government and that too for valid reasons.

11. It may be noticed that in the instant case, pursuant to the Tender

Notification, Respondent No. 3 was granted temporary permit on 4-9-2003 for a period of 15 days from 8-9-2003 to 19-9-2003. After expiry of the said 15 days period, if Respondent No. 3 was to be continued for a further period 60 days in terms of the proviso appended to Rule 9-L, his continuance upon payment of proportionate amount with 10% enhancement, at any rate, can only be up to 7-11-2003, and if the petitioner is to be continued Respondent No. 3 beyond the said date, the power to grant such continuance of Respondent No. 3 is vested only in the Government in terms of the further proviso, and such permission shall be granted by the Government only for valid reasons. Even though it was contended on behalf of Respondent No. 3 that he was continuing by paying the proportionate amount with 10% enhancement, he at any rate, could not have continued beyond 60 days period i.e., 7-11-2003, for beyond the said date, the District Panchayat Officer, was not empowered to either grant temporary permit or extend the lease, and extension beyond the period of 60 days, was to be done only by the Government and that too for valid reasons. Admittedly, the Government had neither granted temporary permit nor extended the lease of Respondent No. 3 beyond 7-11-2003, and as such, there was no valid lease in existence in favour of Respondent No. 3 after the said date.

12. It is the case of Respondent No. 3 that when the authorities tried to interfere with his passage, he filed the suit. It may be noticed that on 13-11-2003 when Respondent No. 3, filed suit O.S. No. 93 of 2003 against the District Panchayat Officer, Machilipatnam, Executive Engineer, Irrigation and Reserve Conservation, K.C. Division, Irrigation Department, Vijayawada, Mandal Revenue Officer, Avanigadda and Mandal, Panchayat Secretary, Pulligadda, Avanigadda Mandal and Assistant Engineer, Irrigation and C.A.D. Department, R.C. Mopidevi Scheme, on the file of the Senior Civil Judge, Avanigadda, there was no valid lease existing in favour of Respondent No. 3 for it stood expired on 7-11-2003. It may be noticed that Respondent No. 3 filed the suit praying for the following relief:

To pass a decree in favour of the plaintiff by granting permanent injunction restraining the defendants (namely, District Panchayat Officer, Machilipatnam, Executive Engineer, (Irrigation and Reserve Conservation) K.C. Division, Irrigation Department, Vijayawada, Mandal Revenue Officer, Avanigadda and Mandal, Panchayat Secretary, Pulligadda, Avanigadda Mandal and Assistant Engineer, Irrigation and C.A.D. Department, R.C. Mopidevi Scheme, their men, subordinates and their representatives etc., forever from interfering with the enjoyment of Pulligadda Reach No. II by the plaintiff by quarrying the sand through the proclaimer or manual labour by using suit passage shown in plaint plan with green colour with lorries, tractors, tippers etc., and from 0.00 K.M. to 6.00 K.M. i.e., within the limits of Pulligadda Gram Panchayat in Krishna River, in the interest of justice.

13. Pending disposal of the suit, Respondent No. 3 in I.A. No. 620 of 2003, filed under Order XXXIX Rules 1 and 2 C.P.C., praying for the relief, which goes

beyond the main prayer in the suit.

To grant temporary injunction restraining the defendants forever from interfering into suit passage A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P (road) shown in plaint plan for ingress and egress to transport from Pulligadda Reach-II quarried sand in lorries, tractors, tippers etc., and to quarry sand from 0.00 K.M. to 6.00 K.M. in Pulligadda Gram Panchayat limits with Proclaimer or manual labour and permit me to deposit 15 (fifteen) days lease amount on or before expiry of lease for every fifteen days in this Court and direct Defendant No. 1 to issue Way Bills to quarry sand for the purpose of transportation whenever needed in the interest of justice.

14. Though the prayer made by Respondent No. 3 in the I.A. was beyond the prayer made by him in the main suit, yet the learned Senior Civil Judge, Avanigadda, on 13-11-2003, allowed the I.A. as prayed for, and the said order in verbatim reads thus:

Heard the Counsel for the petitioner/plaintiff. Perused the Documents 1 to 9. As per the said documents petitioner became the highest bidder for quarrying sand operation 0.00 K.M. to 6.00 K.M. in Pulligadda-II Reach within the Gram Panchayat limits. The said lease is existing till 17-11-2003. In view of D5 and D6 are causing obstructions in respect of the quarry operations and the suit passage, the petitioner/plaintiff constrained to file the present application for grant of injunction. The action of D5 and D6 are not challenged herein as the administrative act of the same within their purview either under the act or powers from higher authorities. They are challenged herein as illegal acts outside the scope and limit of their authority and powers vested in the act. As such, issuance of notice at this stage will only defeat the purpose of this petition. On the strength of the Documents 1 to 9, the petitioner/plaintiff is entitled to conduct sand quarry operations and also use suit passage shown in the plaint plan for ingress and egress to transport from Pulligadda Reach-II in lorries, tractors and tippers etc. As such, I am satisfied there is prima facie case in favour of the petitioner/ plaintiff. Issue interim injunction as prayed for against R5 and R6 in specific and R1 is directed to issue way bills to the petitioner/ plaintiff subject to his deposit of Rs. 55,460/- commencing from 17-11-2003 in this Court by way of challan for every 15 days until further orders. Further R1 and R2 are direct to give suitable instructions and directions to R3 to R6 not to interfere in the above said quarry operations in the above said place as prayed for, and urgent notice by 25-11-2003. The petitioner shall comply Order 39 , Rule 3 CPC by tomorrow.

15. When Respondent No. 3 had sought permanent injunction restraining the authorities from interfering with his passage, I fail to understand how the Senior Civil Judge, Avanigadda, could have granted interim orders beyond the prayer made in the main suit, by directing the authorities therein, particularly the District Panchayat Officer to issue way bills to Respondent No. 3 for every 15 days until further orders, and more so when Respondent No. 3 had no lease

existing in his favour for the same stood expired on 7-11-2003. I am pained to state that the Senior Civil Judge, Avanigadda, in utter disregard of the basic requirement of law that no interim relief can be granted which goes beyond the main relief prayed in the suit, and contrary to the Rules governing the grant of sand leases, had granted the relief, which even the constitutional Court would not have ventured to grant, and at any rate, could not have been granted even if Respondent No. 3 were to succeed in the suit ultimately. It is said to note that even though such an order was passed as far back as on 13-11-2003, the Respondent authorities had not taken any steps to get the said order vacated, and in the guise of the said interim directions by the Senior Civil Judge, Avanigadda, went on extending the lease period and granted temporary permits, which at any rate, could not have been granted for the same runs contrary to the provisions of Rule 9-L of the Rules. The learned Counsel for Respondent No. 3, who is plaintiff in the suit O.S. No. 93 of 2003 on the file of the Senior Civil Judge, Avanigadda, fairly conceded that the prayer made by Respondent No. 3 in the interim application travelled beyond the prayer made by him in the main suit, and the learned Senior Civil Judge had granted, and that he has nothing more to say in the matter. On the face of it, the order dated 13-11-2003 passed by the Senior Civil Judge, Avanigadda, in I.A. No. 620 of 2003 in O.S. No. 93 of 2003, is an illegal order, for it not only travelled beyond the relief sought for in the main suit, but is also not in accordance with the Rules governing the grant of sand leases, and therefore, the same cannot be sustained. This Court having taken cognizance of the said illegal order, cannot be a mute spectator and "permit its continuation or perpetuation, till it is vacated through the regular process. Though the order dated 13-11-2003, passed by the Senior Civil Judge, Avanigadda, in I.A. No. 620 of 2003 in O.S. No. 93 of 2003, is not directly in challenge before this Court in this writ petition, this Court invoking its suo motu powers of revision, and having regard, to its wide supervisory powers under Article 227 of the Constitution of India, over the inferior Courts and Tribunals, sets aside the same.

16. In the above premise, the writ petition deserves to be allowed, and is accordingly allowed, and consequently Respondent Nos. 1 and 2 are directed to lease out the Reach in question in terms of the provisions of Rule 9-L of the Rules by way of sealed tender-cum-public auction. The District Collector, Krishna District, is directed to conduct an enquiry in the matter, and recommend "initiation of disciplinary action against the officers concerned who are responsible for not taking necessary steps to get the interim order passed in the suit, vacated.

17. The Registrar (Vigilance) is directed to place a copy of this order before the Hon"ble the Chief Justice for initiating suitable action against the Senior Civil Judge, Avanigadda, who had passed the order dated 13-11-2003 in IA No. 620 of 2003 in OS No. 93 of 2003, in utter disregard to the basic requirements of the law and the rules governing the grant of temporary permits for sand leases. No costs.