

(2002) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 9956 and 16017 of 2002

K.V. Krishna Murthy

APPELLANT

Vs

District Level Committee and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Citation : (2002) 6 ALD 228

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, in WP No. 9956 of 2002 and Posani Venkateswarlu, in WP No. 16017 Of 2002, for the Appellant; Government Pleader, for Panchayat Raj for Respondent No. 1 in WP No. 9956 of 2002 and for Respondent No. 2 in WP No. 16017 of 2002, A.A.G., in WP No. 9956 of 2002 and for Respondent No. 1 in WP No. 16017 of 2002 and Posani Venkateswarlu, in WP No. 9956 of 2002, for the Respondent

Judgement

L. Narasimha Reddy, J.—These two writ petitions are inter-connected and as such are disposed of together.

2. Respondents 1 and 2 are common to both the writ petitions. The petitioner in WP No. 16017/02 Mr. Balaman Madha Rao, figures as respondent No. 3 in WP No. 9956/ 2002. Hence, the parties shall be referred to as arrayed in WP No. 9956/2002.

3. The writ petitioner was awarded the leasehold rights in respect of sand quarry for Vijayawada-2 reach of Krishna river as well as for a stretch at Thotavallur from 15.40 KM to 18.60 KM. The leases are effective from 17-9-2001. The bid amount for the first year is Rs. 96,00,000/- and Rs. 23,50,000/- respectively for the two reaches. The leases are extendable for one more year with an enhancement of 10% of the lease amount. Similarly, the 3rd respondent is the lessee of sand quarry lease at Chodavaram, which incidentally is located between the reaches leased out to the petitioner. The bid amount of the 3rd respondent was Rs.56,75,999/- and his lease commenced from 3-5-2002. It is initially for a

period of one year and extendable for one more year with 10% enhancement on the lease amount.

4. The leases in favour of the petitioner were executed in Form G-1 appended to the Andhra Pradesh Minor Mining Concessions Rules, 1966-Amendments, published in G.O. Ms. No. 1, Industries and Commerce, dated 1-1-2001 (hereinafter referred as "the Rules"). One of the conditions of the lease (Clause 8-IV) stipulates that the lessee shall not use Proclainers (hereinafter referred to as "the machines"). In the lease deed executed in favour of the 3rd respondent, such a condition was, however, not incorporated. The petitioner complains that in view of the clause incorporated in his leases, he is restrained from using the machines and has to depend on the manual labour for filling the sand into the vehicles, whereas the 3rd respondent, was permitted to use the machines, which is resulting in unhealthy competition and great financial losses to him. In this writ petition, he seeks a direction to respondents 1 and 2 to take steps to prohibit the 3rd respondent from using the machines and, in the alternative, to permit the petitioner to use the same.

5. The 3rd respondent was issued a notice dated 10-8-2002 by the 2nd respondent, requiring him to remove the machines from the sand reach, on the basis of complaint submitted by the Workers' Unions. He challenges the same by filing WPN. 16017/2002.

6. In the counter-affidavit filed by the respondents, it is stated that the prohibition imposed, on use of the machines, is with a view to ensure proper work to the labourers in the area, and accordingly it was incorporated in the form prescribed under the statutory Rules. As regards the omission of the same in the lease executed in favour of the 3rd respondent, it is stated that it was accidental and the Rules do not permit any exemption in this regard. The counter affidavit also dealt with the justification for inclusion of such clause in the leases of the petitioner.

7. Sri C.V. Mohan Reddy, learned Counsel for the petitioner, submits that inasmuch as there was a prohibition contained in the leases as regards use of machines for filling the sand, the petitioner was conforming to the same despite the various labour problems faced by him. He states that in view of the fact that the 3rd respondent was granted quarry lease, in between the two reaches granted to the petitioner, without such clause, he has been using the machines, thereby attracting the customers. It is his case that use of machines by the 3rd respondent was not only working out economical to him, but also was attracting a substantial Section of customers having regard to the speed at which the trucks can be filled with the machines. It is in this context that he states that inasmuch all the three leases are adjoining, there should be uniformity of conditions, in that, either the petitioner should be permitted to use the machines, or the 3rd respondent should be prohibited from using the same.

8. The learned Additional Advocate-General, appearing for respondents 1 and 2,

submits that the leases for sand quarries are granted under the Rules and Rule 9(h) provides for execution of leases in Form G-I, which in turn, contains a specific clause prohibiting use of machines, and in that view of the matter, the 1st limb of the relief claimed by the petitioner cannot be acceded to. As regards the second limb of the relief claimed by the petitioner, the Additional Advocate-General submits that it was only on account of accidental omission that the relevant clause in Form G was omitted while executing the lease in favour of the 3rd respondent and respondents 1 and 2 intend to rectify the same.

9. Sri S.R. Ashok, learned senior Counsel appearing for Sri Posani Venkateswarlu, Counsel for the 3rd respondent, submits that the conditions and circumstances under which the lease was granted to the 3rd respondent was totally different from those under which the same were granted to the petitioner. He draws the attention of this Court to the condition incorporated in the tender notification, particularly, clause 28 of the same, where it was clearly stated that the successful tenderer shall be entitled to use the machines for filling the sand in the vehicles. He states that it was on account of this clause that the 3rd respondent was induced to offer his bid and had such a clause not been there, different considerations altogether would have ensued. He also states that it was on the basis of a tender notification without such a clause that the petitioner submitted his tender and lease deeds were executed in Form-G, and as such, the petitioner cannot compare or contrast his leases with that of the 3rd respondent. He submits that what ever be the justification or otherwise for the petitioner in pleading parity with the 3rd respondent, the latter cannot be prohibited from using the machines, in view of the fact that there was a specific clause in that regard in the tender notification.

10. Grant of leases for sand quarries is governed by the Rules referred to above. It is not in dispute that the leases in favour of the petitioner are executed in Form G and the same contains a clause, which prohibits the use of machines in lifting and filling the sand from the quarries, the relevant clause reads as under:--

"No quarrying of sand will be done with Proclainers and such a large scale labour displacing machinery."

As long as such a clause subsists, the petitioner cannot claim exemption from the same.

11. The matter, however, is not that simple. Between the quarries of the petitioner, the 3rd respondent was granted lease for the same purpose in another reach. In the lease deed executed in favour of the 3rd respondent, the clause referred to above was omitted. The omission, however, is not accidental. From a reading of the tender notification, relating to the lease of the 3rd respondent, it is evident that a specific clause viz., clause 28 was incorporated, which is to the following effect:

"The highest bidder shall have every right as regards the method of loading sand available in a reach or village, into a vehicle."

It is not at all difficult to imagine that this clause constituted an important aspect, which obviously has induced the 3rd respondent to come forward with the offer as he did. The absence of such clause would certainly have made a lot of difference. The contention of respondents 1 and 2 that non-inclusion of Clause 8-IV in the lease deed executed in favour of the 3rd respondent, was accidental, cannot be accepted, in view of specific clause No. 28 in the tender notification.

12. The learned Counsel for the petitioner as well as the learned Additional Advocate-General, submit that the rules are statutory in nature and the form prescribed therein lot ins part of it; and in that view of the matter, it was not open to respondents 1 and 2 to deviate from the procedure prescribed under the Rules. It is their contention that it was only the Government that was competent to amend or alter the conditions.

13. The learned Counsel for the 3rd respondent, on the other hand, submits that the conditions in Form G are not so rigid and as long as it is a contract between respondents 1 and 2, on one hand, and the 3rd respondent, on the other, they have every right to incorporate or omit such conditions as they wish, depending on the facts and circumstances of the case. Placing reliance on the judgment of the Division Bench of this Court reported in K.V.V. Satyanarayana Vs. District Level Committee, Eluru, West Godavari District and Others, , he submits that it is deducible therefrom that the contentions contained in Form-G are not mandatory.

14. The omission of the relevant clause in the lease deed executed in favour of the 3rd respondent, as observed above, cannot be said to be accidental nor it can be said that the 3rd respondent has induced or represented to respondents 1 and 2 to omit such a vital clause. It is true that omission of such clause assumed greater importance in view of working of the leases on both sides of the reach of the 3rd respondent. From the judgment relied upon by the learned Counsel for the 3rd respondent, it is too difficult to discern as to whether the conditions contained in Form-G can be treated as directory or mandatory. Therein, the Division Bench was dealing with the situation of balancing the interest of the lessees, on one hand, and the labourers, on the other. The fact remains that the 3rd respondent is vested with a valid legal right to operate the quarry in accordance with the lease deed executed in his favour. If respondents 1 and 2 are of the view that there was some deviation from the Rules, it is for them to take such corrective steps as are open to them in law, and may propose to revise or revoke the lease in favour of the 3rd respondent. The same can be undertaken with his consent or by following the procedure prescribed by law, viz., by giving a notice to him and providing for refund of the amount for the unexpired period of lease, taking into account other relevant factors. Till such a course of action is adopted, the 3rd respondent shall have every right to operate the quarry as provided for under the lease deed.

15. At the same time, the petitioner cannot be exposed to the unhealthy competition as regards the lease executed in favour of the 3rd respondent under the same provisions of law. If respondents 1 and 2 feel that the 3rd respondent

ought not to have been permitted to use the machines, they have to take necessary steps as indicated above. If for any reason they feel that it is not possible or feasible to disturb the lease of the 3rd respondent, respect to equity in law and equal treatment, demand that the petitioner is extended the same treatment and he also be permitted to use the machines, by imposing such terms as are necessary. This, in turn, will depend on several factors, such as, the interest of the manual labourers, etc.

16. In view of the facts referred to above, the writ petitions are disposed of directing that -

(a) Respondents 1 and 2 shall decide as to whether the lease in favour of the 3rd respondent, particularly with reference to the condition as regards use of machines, needs to be revised or revoked, in accordance with law;

(b) In case respondents 1 and 2 find that it is not possible to revise or revoke the lease of the 3rd respondent, they shall consider the feasibility of extending the same facility, as regards the use of machines for filling the sand, to the petitioner also, subject to such terms as they may feel proper and necessary; and

(c) Inasmuch the steps referred to above are alternative to each other, the entire exercise shall be completed within a period of one month from the date of receipt of copy of this order.