(2011) 11 AP CK 0154

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13076 of 2008

Lovely Granites APPELLANT

Vs

Government of A.P. and Others RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 35A

Citation : (2012) 2 ALT 42

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : R.K. Suri, for the Appellant;

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This Writ Petition is filed with the prayer, which reads as under: For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon''ble Court may be pleased to issue a Writ, Order or Direction more especially one in the nature of Writ of Mandamus declaring the Government Memo No. 8318/MII(I)/2007 dt. 24.03.2008 issued by the 1st respondent followed by demand notice No. 482/Q/2007 dated 25.04.2008 issued by the 3rd respondent demanding the payment of Rs. 2,35,054/- as illegal and arbitrary and consequently set aside the same by directing the respondents not to collect an amount of Rs. 2,35,054/- towards the Seigniorage Fee + onetime penalty, and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

The petitioner is a granite industry, which is engaged in the business of purchasing raw blocks from different leaseholders and after purchase they cut the raw blocks into slabs and undertake polishing. The Regional Vigilance and Enforcement Officials of Srikakulam Unit inspected the unit of the petitioner, which is located at Lingalavalasa village, Bhogapuram Mandal in Vizianagaram district, on 22.08.2006 and verified the available stocks and had taken measurements of granite raw blocks and polished slabs and found that 119.535

Cubic Metres of raw granite blocks are available, out of which, valid transit permits have been produced only for a quantity of 52.377 Cubic Metres, and a quantity of 67.158 Cubic Metres of granite is not covered by transit permits. Based on the report sent by the Vigilance and Enforcement officials, the petitioner was issued a show cause notice dated 14.02.2007 issued in Demand Notice No. 482/Q/2007 calling upon him to file his explanation within 15 days from the date of receipt of the said notice, failing which normal Seigniorage of Rs. 1,17,527/- together with five times penalty of Rs. 5,87,635/- has to be levied on such granite which is not covered by transit permits.

2. It is stated that on 10.03.2007 the petitioner has filed his explanation to the said show cause notice dated 14.02.2007 disputing the variations observed by the inspecting officials. It is the case of the petitioner that all the granite blocks which were available in the unit of the petitioner on the date of inspection were covered by waybills and it was their further case that after procuring rough blocks they undertake chipping of the edges of the blocks, cutting across from the centre etc and as such it results in loss in volume / quantity of the blocks.

3. After filing of the explanation by the petitioner, the primary authority i.e. Assistant Director of Mines and Geology, Vizianagaram issued demand notice No. 482/Q/2007 dated 03.04.2007 demanding an amount of Rs. 1,17,527/- towards normal seigniorage fee and Rs. 5,87,635/- towards five times penalty for the quantity of 67.158 Cubic Metres of granite, which was found without being supported by valid transit permits. As against the said demand notice, the petitioner carried the mater by way of revision before the 1st respondent as provided under Rule 35-A of A.P. Minor Mineral Concession Rules, 1966.

4. In the revision filed before the Government, it is specifically pleaded that the actual measurement of granite blocks as per the bills is 70.514 Cubic Metres. In spite of the same, measurements were wrongly recorded by the Vigilance and Enforcement officials, as 54.631 Cubic Metres. It is further pleaded that measurements taken by the officials are less than the actual measurements of the blocks as per the bills, which were also enclosed along with the revision petition filed by the petitioner and further pleaded that there is no evasion of seigniorage fee as alleged and requested to set aside the demand notice issued against the petitioner unit. The said revision has been disposed of by order dated 24.03.2008 issued in Memo No. No. 8318/MII(I)/2007 whereby the revisional authority has confirmed the demand of seigniorage fee of Rs. 1,17,527/- towards normal seigniorage fee, however, reduced the penalty from five times to one time. Hence the present Writ Petition.

5. In this Writ Petition it is the case of the petitioner that in spite of several grounds being raised before the revisional authority, without recording any finding on such grounds, but simply on the ground that as the petitioner could not attend the hearing in spite of four chances being given, the impugned order has been passed. It is further contended that the petitioner was not given any written notice and hence there is no occasion for him to appear before the

revisional authority to represent his case. It is further submitted that in any event, having regard to the material placed before it, the revisional authority ought to have allowed the revision as prayed for, instead of confirming the seigniorage fee and modifying the penalty from five times to one time.

6. Though this Writ Petition is of the year 2008, no counter affidavit has been filed.

7. Heard.

8. The learned Government Pleader for Mines and Geology submitted that at the time when the Vigilance officials inspected the unit of the petitioner, the petitioner failed to produce valid permits for the entire granite, which was available in the premises of the petitioner. It is further submitted that transit permits have been produced only for a quantity of 52.377 Cubic Metres and the quantity of granite to the extent of 67.158 Cubic Metres was not covered by transit permits and as the said quantity was procured illegally, without paying normal seigniorage fee, the respondents have issued the demand notice correctly and even the revisional authority has modified the penalty from five times to one time and as such there are no grounds to interfere with the order impugned in this Writ Petition.

9. Having heard the learned counsel on either side, I have perused the show cause notice dated 14.02.2007 issued by the Assistant Director of Mines and Geology, Vizianagaram, the explanation offered by the petitioner to the notice and the order passed by the revisional authority.

10. At the stage of admission, this court observed that any payments pursuant to the impugned order will be subject to further orders in the Writ Petition.

11. A perusal of the explanation offered by the petitioner to the show cause notice issued by the primary authority reveals that he has clearly disputed the allegations made against him. He specifically denied the allegation of being in possession of granite, which is not covered by valid permits. In spite of such a defence before it, the Assistant Director of Mines and Geology, simply referred to the explanation offered by the petitioner and issued demand notice for payment of normal seigniorage fee plus five times penalty. Even a perusal of the order of the revisional authority also indicates the various grounds raised by the petitioner in the revision petition filed under Rule 35-A of A.P. Minor Mineral Concession Rules, 1966. Though the various grounds raised by the petitioner were referred to in the impugned order, but, without recording any finding on such grounds, the revision was disposed of by confirming the demand of seigniorage fee and by modifying the penalty from five times to one time. Without recording any finding on merits, only on the ground that in spite of four chances being given, the petitioner could not attend the hearing, the impugned order has been passed. The order of the Government is not an order dismissing the revision petition for non-prosecution. When the order is passed on merits and when the grounds raised by the petitioner are referred to, it is expected from the

revisional authority to record a finding on merits on the grounds raised by the petitioner before confirming the demand of seigniorage fee and imposing one time penalty. Hence, as the revisional authority has not considered the various contentions raised by the petitioner, I deem it a fit case to set aside the order dated 24.03.2008 passed in Government Memo No. 8318/ MII(I)/2007 by the first respondent and to remit the matter back to the first respondent - revisional authority for fresh consideration.

12. For the aforesaid reasons, the order of the revisional authority dated 24.03.2008 passed in Government Memo No. 8318/ MII(I)/2007 is hereby set aside and the matter is remitted back to the first respondent - revisional authority to consider the revision preferred by the petitioner afresh and to pass appropriate orders thereon within a period of three months from the date of receipt of a copy of this order, in accordance with law. It is needless to observe that the petitioner or his counsel, if any, on record, they should be informed by advance notice about the hearing of the revision. As it is stated that the seigniorage fee and one time penalty have already been deposited by the petitioner, the said amount shall be subject to the further orders to be passed by the revisional authority. Subject to the above directions, this Writ Petition is allowed. No order as to costs.