
(1997) 06 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 897 of 1997

Siva Stone Crusher

APPELLANT

Vs

Regional Vigilance and Enforcement Officer

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

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

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 1998 AP 24 : (1997) 4 ALT 731

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : A. Ramanarayana, for the Appellant; Govt. Pleader for Industries, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The impugned proceedings of the respondent namely, the Regional Vigilance and Enforcement Officer, Vigilance and Enforcement Department, Guntur, in No. 21/V&E/NR/96-97 dated 8-1-1997 is challenged in this writ petition as violative of the principles of natural justice and to pass appropriate orders.

2. The petitioner is the proprietor of M/s. Siva Stone Crusher. The said firm which is a stone crushing unit in Perecherla village of Guntur since 1994 is stated to have consumed 23160 units of Electric power by crushing at the rate of 4 units per cubic meter worked out at 5790 cubic metres. out of which, the seigniorage is covered on 700 cub. mtrs. leaving a balance of 5090 cub. mtrs. uncovered and therefore in the impugned proceedings it was alleged that there is a liability on the part of the petitioner to pay Rs. 76,350/-which had not been discharged and therefore, for default, a penalty of five times of seigniorage was levied under Rule 26(3)(1) of the A.P. Minor Mineral Concession Rules, 1966 (for short "the Rules") amounting to Rs. 4,58,100/-. The petitioner was also called upon to pay

the amount within a week failing which orders would be passed to enforce the order as per law.

3. Sri A. Rama Narayana, learned Advocate for the petitioner has contended that the impugned proceedings is not in accordance with Rule 26 of the Rules as no opportunity was given to the petitioner to produce any document, book, register or record as is referred to in Sub-clause (d) of Rule 26(3)(i) or no opportunity was given to show cause as to why such levy should not be placed as per the rule and therefore, the impugned order is not only illegal but also arbitrary and violative of the principles of natural justice.

4. Smt. Sushanthi, learned Asst. Government Pleader for the respondent, in addition to the grounds raised in the counter, has contended that prima facie the petitioner had violated the obligations under Rule 26 to pay the necessary charges as a condition of the licence and had failed to produce the documentary proof in token of having paid the mineral revenue due to the Government and therefore the respondent had passed the impugned order within the implications of Rule 26(3)(ii) of the Rules and therefore, the writ petition has no merit.

5. The impugned proceedings intendedly imposed the penalty of Rs. 4,58,100/- which is five times the seigniorage of Rs. 77,350/- for the balance of 5090 cubic meters uncovered regarding the payment of the revenue due to the Government. Rule 26 has a title "Penalty for unauthorised quarrying". In whatever manner the seigniorage is fixed and computed for totalling up to 5 times as per the rule, patently it is the penalty which the rule contemplates. The impugned penalty has been regulated under the rule, which is better to be reproduced for proper appreciation.

"Rule 26 : PENALTY FOR UNAUTHORISED QUARRYING :

(1) If any person carried 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 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 any such document, book, register, record as is referred 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."

6. In substance, a person carrying on quarrying operations etc., in contravention of the rules shall be liable to pay penalty, which should be such a seigniorage fee together with assessment as may be imposed by the officer. The Director of Mines and Geology is empowered to impose such a penalty. In no case such penalty shall exceed 10 times the normal seigniorage fee. For ascertaining the position of payment of mineral revenue, the person authorised viz., Director of Mines and Geology shall be entitled to enter and inspect the premises, survey and take measurements, weigh, measure etc., examine the document, book etc., and then order the production of any such document, book, register, record as is referred in Sub-clause (d). If no such documentary proof is produced in token of having paid the mineral revenue due to the Government by any person, then, such authority is empowered to impose the penalty which is five times of the normal seigniorage fee as penalty in addition to normal seigniorage fee leviable under the rules. The vires of the provision etc., has already been tested and accepted by a Full Bench of this court in *L. Venkateswara Rao and Others Vs. Singareni Collieries Company Ltd. and Others*, in addition to the other principles therein which are not relevant for the purpose of this case. But when the vires is upheld, it is also implied that such a power of the vires should be exercised within the implication of the provisions or otherwise, it may become the ultra vires exercise of the power vested in the authority. The very fact that such a levy is penalty based on seigniorage as a civil consequence shows that the person affected has a right to be given an opportunity. Moreover, Rule 26(3)(i)(e) emphatically imposes obligation on the authority to order the production of any

such document, book, register, record as is referred to in Clause (d) meaning thereby that the affected person will be given opportunity to produce such material which are described in the provision (possibly any other material which may be sufficient to satisfy the authority that the condition to pay the Government Revenue is satisfied). The consequence of non-production of such material as is described under Rule 26(3)(i) and non-compliance of the orders under Sub-clause (e) results in the imposition of the penalty under Rule 26(3) (ii). The expression that if no documentary proof is produced in token of having paid the mineral revenue due to the Government means that failure or non-compliance of the order under Sub-clause (e) or in other words, failure to avail the opportunity afforded by issuing such an order or by receipt of such an order. In other words, a person is entitled to be given an opportunity and to be treated with principles of natural justice. Having availed such an opportunity, if he fails to comply with, he is bound to the consequences of suffering the imposition of penalty. Such a person cannot complain later that he cannot be mulcted to pay the penalty. It is apparent under the circumstances and also in the light of the provisions stated above that it is mandatory for the authority to comply with the provisions inasmuch as to strengthen it by expending the application of the principles of natural justice without which the order will be vitiated. Therefore, the question in each case would be whether such compliance has been adhered to by the authority and such a non-compliance has been established against the person who has to be put under the sufferance for payment of penalty.

7. In this case, the counter does not show that the petitioner was given an opportunity before levying the penalty under the impugned proceedings as is required under Rule 26(3)(i)(e) before passing orders under Rule 26(3)(ii). The attempted explanation to show the compliance is that a cyclostyled copy produced showing that the statement of the petitioner was recorded by the respondent on 3-3-1997. Beyond that no other procedure is followed. Even such an admitted procedure has been attempted after passing the impugned order. That will not cure the defect in issuing the impugned proceedings without complying with the provisions and adopting "the principles of natural justice.

8. The learned Asst. Government Pleader for the respondent submits that under the circumstances, the respondent will be entitled to pass appropriate orders in accordance with the provisions stated above and that liberty should be kept open. At any rate, the impugned order cannot be allowed to remain.

9. The writ petition is allowed. The impugned proceedings are quashed. However, the respondent shall be at liberty to pass any appropriate order in accordance with law and in the light of the observations made above. No costs.