
(2004) 02 AP CK 0074
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18359 of 2002

V. Bhaskar

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Andhra Pradesh Water Land and Trees Rules, 2004 — Rule 23

Citation : (2004) 3 ALD 341

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Lakshman Reddy, for the Appellant; Government Pleader for Panchayat Raj for Respondent Nos. 1 to 3, P. Raghavender Reddy, SC for Zilla Parishad for Respondent Nos. 4 to 25, Gouri Shankar Sanghi, SC for South Central Railways for Respondent No. 26, C.V. Mohan Reddy, for Respondent Nos. 27 and 30, E. Ajay Reddy, for Respondent No. 28, M. Bhaskara Lakshmi, for Respondent Nos. 29, 31 and 32, N. Shobha, for Respondent No. 33 and B. Vijayasen Reddy, for Respondent Nos. 34 to 49, for the Respondent

Judgement

L. Narasimha Reddy, J.—This writ petition is filed challenging the notification, dated 7-9-2002, issued by the District Panchayat Officer, Adilabad inviting tenders in respect of 63 sand quarries in Adilabad District.

2. When the writ petition came up for admission, extensive arguments were advanced on behalf of the petitioner as well as by the learned Additional Advocate-General touching on the general aspects of the matter. Since the matter involves the grant of leases to quarry the sand, the effect of grant of such leases on the alarming depletion of the ground water level and non-compliance with the rules framed by the Government of A.P. under G.O. Ms. No. 1, dated 1-1-2001, were considered.

3. Having regard to the general importance of the matter, several parties and Counsel intervened. Orders came to be passed from time to time, with the object of minimizing the adverse effect of sand mining on ground water levels, and to

meet the requirements of sand, for the construction activities. As an interim measure, sand mining was prohibited except in the rivers of Krishna, Godavari and Pennar. The various reports, that have been filed subsequent thereto, disclose that this step has contributed to either improvement or prevention of fall in ground water levels in certain areas. Number of applications came to be filed by the Government as well as private individuals for relaxing the condition so as to enable the District Level Committees to grant mining leases duly imposing such conditions as are necessary.

4. The learned Additional Advocate-General has made available to this Court, the relevant statistics in relation to ground water levels and has also advanced arguments dealing with the various provisions such as the Andhra Pradesh Water, Land and Trees Act, 2002 and the rules made thereunder, the rules framed in G.O. Ms. No. 1, dated 1-1-2001 and the other related provisions.

5. The learned Counsel for the petitioner and those representing the impleading parties have also apprised the Court on different aspects of the matter.

6. On account of the expansion of construction activities, enormous pressure on natural resources has resulted. Sand is one of the important materials, which is required in vast quantities in construction. Its generation is limited and wholly depends on the rainfall and geological factors. With few exceptions, what is sought to be exploited in the matter of quarrying of sand is the deposits, which have been accumulated over centuries. If it is a case where the removal of this material is not going to have any impact or where its deposits get renewed in the same proportion as removals, no one can have any plausible objection for quarrying of sand. In fact, State as well as public were oblivious to such activity as long as it was not in greater proportions.

7. It is a recognized fact and universal truth that sand possesses the rare characteristic and capacity of not only retaining water with it but also of preserving the ground water levels underneath, and surrounding it. One Judge had aptly stated that sand has the typical character of stealing the water when it rains, preserving it and releasing it for the benefit of humanity in the needed proportions and quantities. If such a material is permitted to be removed indiscriminately, the threat is not only to the quantity of the sand for future use, but also to the ground water levels, particularly in the arid areas. The statistics that are placed before this Court and the facts furnished by the respective Counsel disclose that due to indiscriminate removal of sand, situations have emerged that areas where water was available almost on the surface came to be classified as dark areas in terms of ground water level.

8. The Government stepped in to rescue the situation. The sand mining was regulated and several conditions were incorporated in the rules framed under the Mines Minerals Act and issued in G.O. Ms. No. 1, dated 1-1-2001. To protect the ecological balance etc. The Andhra Pradesh Water, Land and Trees Act was also enacted and Rules were framed thereunder. While G.O. Ms. No. 1, dated

1-1-2001, deals exclusively with sand mining and the precautions to be taken therein. Rule 23 of A.P. Water, Land and Trees Rules, 2002 (for short "the Rules") prescribes conditions subject to which the sand mining can be permitted. Rule 23 of the Rules reads as under:

Sand mining: In areas where sand mining is affecting ground-water regime, such of the areas shall be notified and transportation of sand shall be prohibited and mining and transportation of sand shall be banned in Categories-I, II and III ground water micro basins/mandals and for other areas the following conditions shall apply for exploitation of sand.

(a) Sand mining shall not be permitted in I, II, III order streams except for local use in the villages or towns bordering the streams, Transportation of sand from these notified I/II/III order streams through mechanical means out of the local jurisdiction shall be banned.

(b) In IV orders stream, sand mining shall be restricted to specified areas.

(c) In V order and above rivers viz., Godavari, Krishna, Pennar etc., sand mining may be permitted without affecting the existing sources for irrigation for drinking water or industrial purpose.

(2) The sand lease holders shall not carryout quarrying within 500 meters of any existing structure such as bridges, dams, weirs or any other cross drainage structure.

(3) Vehicles carrying sand shall not ply over the flood banks except at crossing points or bridges or an a metal road.

(4) Permission to quarry sand shall not be granted within 500 meters of any ground-water extraction structures either for irrigation or drinking water purposes.

(5) The streams/rivers where the thickness of sand is quite good (more than 8.00 meters) the depth of removal may be extended to 2.00 meters but in no case beyond two meters.

(6) Sand quarrying shall not be permitted . within 15 meters or 1/5 of the width of the streambed from the bank whichever is more.

(7) Sand mining shall not be permitted in streams where the thickness of sand deposition is less than 2.00 meters.

(8) The depth of removal of sand shall be restricted to one meter particularly in minor streams where the thickness is more than 3.00 meters and less than 8.00 meters.

(9) The sand quarrying shall be restricted to depths above the water table recorded during monsoon and in no case effect/disturb the water table.

(10) The quantity of sand deposited annually in every stream or river shall be

monitored by establishing observation stations along the stream course.

(2) The ground Water Department shall take up joint inspection along with officials of Mines and Geology Department or other concerned departments whenever cases are referred to study the impact of sand mining in an area and shall give its recommendations.

9. If these provisions are strictly implemented, the situation can be prevented from becoming worse. The whole difficulty is about the identification of the implementing agency and its commitment. Obviously, recognizing the difficulty of any individual department to prevent the illegal sand mining, the Government had conferred powers or imposed the duties upon the officials viz., Revenue, Panchayat Raj, Police and Transport Department under Clause 9-X of G.O. Ms. No. 1, dated 1-1-2001. It is, however, confined to the power of seizure of vehicles used in illicit transport of sand.

10. As and when the limited resources of sand have been exhausted, be it on account of grant of leases of illicit mining, some agencies have established, what generally called as filter beds. The clay is washed through a process and sand is extracted out of it. Such a procedure is prevalent particularly in the districts surrounding Hyderabad. It requires huge quantities of water on account of the same. Most of the areas were already identified as dark zones, due to depletion of ground water. The immediate impact is on agriculture, and domestic water supply. No law permits such an activity and invariably it is resorted to in a clandestine manner. It, however, needs to be observed that it cannot take place except with the tacit approval by the local officials of Revenue, Panchayat Raj and Police Department. It is only when they pretend ignorance, that such activity takes place. Neither the persons who resort to this nor those who fail in their duty to curb this activity, realize that in the run for easy money, they are doing enormous damage to the community at large as well as the ecology.

11. On a consideration of the submissions made by the respective Counsel, this Court finds that the writ petition can be disposed of with the following directions:

(1) The District Level Committee, which is conferred with the power under G.O. Ms. No. 1, dated 1-1-2001 to grant mining leases, shall notify any river, stream or other place where sand is in deposit for auction, only after obtaining the report as well as the opinion from the concerned head of the water agency in the District. It shall also invite objections from the people of the locality and consider the same before issuing notification.

(2) The District Collector of each District shall review the ground water situation atleast once in every quarter ending with March, June, September and December in consultation with the authorities of the ground water Department and Panchayat Raj Department. In case it emerges in any of the reviews that it is no longer permissible to permit the grant of continuance of mining lease in any particular area, quarrying shall be stopped forthwith. Inasmuch as Rule 9(v) of the Rules provides for such a course of action, the lessee shall be entitled, at the

most, for refund of the lease amount for the unexpired period and nothing more.

(3) While granting any lease for quarrying the sand, the District Level Committee shall observe the provisions of Rule 23 of the Rules and it shall invariably incorporate the relevant conditions to enforce the rule in the lease deeds. It shall be the obligation and the duty of the concerned District Panchayat Raj Officer to record a finding that the proposed reach in respect of which lease is granted, conforms to the parameters stipulated in Rule 23 and shall furnish the relevant facts and figures. The Joint Collector who is also a member of the District Level Committee shall ensure that Rule 23 is complied with in all respects, whenever steps are taken to invite tenders for grant of quarry lease.

(4) Since the extraction of sand through the process of filter beds or similar activity is not permitted by any Law, and shall be treated as prohibited. It shall be the duty of the Revenue Divisional Officer and the Sub-Divisional Police Officer concerned, to ensure that no such activity takes place. It is further directed that it shall be open to the member of any public or voluntary organizations to bring to the notice of the District Collector or District Legal Authority, constituted under the Legal Services Authorities Act of any instances of violation of this. The instances so brought to the notice to the said agencies shall be treated as dereliction in duty per se on the part of the concerned official, which in turn shall be forwarded to their respective appointing authorities for further course of action.

(5) The Court places on record the service rendered by the respective Counsel as well as the learned Additional Advocate-General in the matter.