

(2003) 01 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 6250 of 2002

ECI Engineering and
Construction Co. Limited

APPELLANT

Vs

The Government of A.P. and
Others

RESPONDENT

Date of Decision: Jan. 9, 2003

Acts Referred:

- Andhra Pradesh Minor Mineral Concession Rules, 1966 - Rule 35, 35A
- Constitution of India, 1950 - Article 226
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 3

Citation: (2003) 1 ALD 629 : (2003) 2 ALT 51

Hon'ble Judges: N.V. Ramana, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: P. Gangaiah Naidu, for the Appellant; GP for Industries and A.G., for the Respondent

Final Decision: Dismissed

Judgement

B. Sudershan Reddy, J.

The petitioner-company herein invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the Memo No. 19005/M.II(1)/2001-3, dated 20-2-2002 issued by the first respondent and the consequential demand Notice No. 4823/MR2/99, dated 15-3-2002 issued by the second respondent, as illegal, improper, unjust and violative of the principles of natural justice.

2. The petitioner-company was awarded a work of site levelling and grading work (part of Group-I of Tender No. BHEL:PS:SCT:808) in the plant area in 2 x 500 MW Simhadri Thermal Power Project, near Visakhapatnam, Andhra Pradesh by M/s. Bharat Heavy Electricals Limited (BHEL) as sub-contract. We have noticed the details

and terms and conditions of the sub-contract in W.P. No. 6916 of 2002 and Batch. The scope of the sub-contract entrusted to the petitioner involves (1) Earth work Excavation, back filling, disposal as per the specifications and drawings; (2) Earth work in filling and grading obtained from compulsory excavation; and (3) Supplying and filling earth as per specifications. The time allowed for completion of work was nine months. The letter of intent was issued to the petitioner-company by the BHEL vide letter dated 4-1-1999.

3. According to the petitioner-company, it had consumed total quantity of 18,06,026 cubic meters of material for the purpose of filling works. Out of which, a quantity of 1,67,000 cubic meters alone has been taken from the government land under Department of Mines and Geology, Visakhapatnam. The balance quantity of filling material of earth i.e. about 16,38,926 cubic meters was brought from outside the plant from borrow areas i.e. ponds and private lands.

4. Shorn of all the details - it is asserted that the petitioner-company in the process of execution of the said contract work used the earth/soil as the filling material. The said earth/soil has been obtained from the approved borrow areas of the ponds and patta lands. It is not necessary to notice the further details except to note that the petitioner-company had also participated in the meeting convened and held on 4-9-1999 between the Department of Mines and Geology, NTPC, BHEL and the agencies, which executed the work along with other sub-contractors. In the said meeting it was agreed that the Deputy Director of Mines and Geology concerned shall decide as to the nature of filling material utilised by the sub-contractors. Accordingly, a joint inspection was conducted by the Deputy Director of Mines and Geology, Visakhapatnam and Assistant Director of Mines and Geology on 16-3-1999 and, thereafter, another meeting was held on 4-9-1999 by the Director of Mines and Geology with all the sub-contractors and the officials of NTPC and BHEL to discuss about the payment of seigniorage fee by the sub-contractors including the petitioner herein and certain procedure was agreed upon by and between the participants. Admittedly, the BHEL communicated the minutes of the said meeting to all the sub-contractors including the petitioner herein requiring them to inform the Mines Department about the quantity of material used by them in filling works. The Deputy Director by proceedings dated 24-9-1999 communicated the minutes of the said meeting to the petitioner also.

5. Be it as it may, the Assistant Director of Mines and Geology, Visakhapatnam issued show cause notice dated 1-4-2000 to BHEL to show cause as to why the seigniorage fee along with five times penalty should not be collected in respect of the total quantity of filling material utilised by the principal contractor as well as the sub-contractors. The BHEL after receiving the said show cause notice appears to have stopped the release of the bills to the petitioner-company. The petitioner-company filed W.P. No. 4655 of 2000 seeking a direction to the BHEL to release their bill amount. This Court by its order dated 28-4-2000 by way of an

interim measure directed the respondents 2 and 3 to issue a demand notice for which the petitioner-company has been directed to furnish bank guarantee as a condition for release of the amounts by the BHEL. This did not, however, materialise and the petitioner-company had withdrawn the said writ petition itself and accordingly the same has been dismissed by this Court on 20-12-2002.

6. The Deputy Director of Mines and Geology, Visakhapatnam issued a demand notice dated 25-5-2000 to the petitioner-company raising a demand for an amount of Rs.1,73,35,800/- towards normal seigniorage fee and Rs.8,94,46,500/- towards five times penalty, totally for an amount of Rs.10,73,35,800/-, for a total quantity of 17,88,930 cubic meters of minor mineral used by them. The petitioner-company vide its letter dated 14-8-2000 required the Deputy Director to reconsider and review the said demand notice dated 25-5-2000. The Deputy Director reiterated and demanded the same amount by another demand notice dated 23-10-2000. At this stage, the petitioner-company filed W.P. No. 22465 of 2000 impugning the demand notice dated 22-5-2000 and 23-10-2000 and obtained ex parte suspension of the said demand notice.

7. The Deputy Director in similar manner, as in the other cases i.e. W.P. No. 6916 of 2002 and Batch, and obviously for extraneous consideration issued the revised demand notice dated 24-2-2001 for a sum of Rs.1,59,15,980/- for a quantity of 18,48,078 cubic meters of material without levying five times penalty.

8. Even while W.P. No. 22465 of 2000 filed by the petitioner-company was pending, the petitioner-company made a detailed representation dated 13-9-2001 to the Government seeking exemption from the payment of seigniorage charges contending as though the entire material utilised by them is only earth. The petitioner-company placed reliance upon the order stated to have been passed by the Government while disposing of the revision petition filed by one M/s. Madhucon Projects Limited. They have claimed for similar relief. The said representation was treated as a revision petition by the Government. The Government accordingly issued notice dated 17-9-2001 requiring the petitioner's presence on 22-9-2001 in connection with the hearing of the revision petition filed by it. It is at that stage, the petitioner-company had withdrawn W.P. No. 22465 of 2000 unconditionally and this Court by the order dated 8-11-2001 dismissed the said writ petition as withdrawn, which is to the following effect:

"Learned counsel for the petitioner seeks to withdraw the writ petition and also filed a letter to that effect in the Registry dated 5-10-2001.

In view of the above, the writ petition is dismissed as withdrawn. No costs"

9. The petitioner-company did not ask for any liberty or leave of the Court to prosecute the alternative remedies, if any, available to it in law. The writ petition has been dismissed by this Court, though as withdrawn. In our considered opinion, the demand notices dated 25-5-2000 and 23-10-2000 for an amount of Rs.10,73,35,800/-

automatically get revived. Nothing further remained in the matter. The Government as well could have dismissed the representation dated 13-9-2001 of the petitioner-company.

10. The Government, however, having considered in detail the representation made by the petitioner-company by treating the same as a revision under Rule 35 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules"), came to the conclusion that the petitioner is liable to pay the normal seigniorage fee of Rs.1,78,89,300/- and five times penalty of Rs.8,94,46,500/-, aggregating to Rs.10,73,35,800/- for quantity of 1,78,830 M3 of gravel/ordinary clay consumed by them. Hence, this writ petition.

11. In this writ petition, it is contended that the very basis for issuance of notice dated 25-5-2000 is on account of misreading of the interim order passed by this Court in WPMP No. 6175 of 2000 in W.P. No. 4655 of 2000. It is submitted that the demand notice dated 25-5-2000 is on account of such misreading as though this Court directed to issue any demand notice. The submission is totally misconceived. Merely because there is a reference to the order passed by this Court in the demand notice, it cannot be said that the demand itself is raised under the directions of this Court. It is explained in the counter affidavit that as per the information furnished by the BHEL in their letter dated 8-3-2000 the petitioner-company has supplied a quantity of 17,88,930 cubic meters of filling material in the construction of 2 x 500 MW STPP for land development work. Basing on the said information, the third respondent herein issued a demand notice dated 25-5-2000 for payment of normal seigniorage fee and five times penalty aggregating to Rs.10,73,35,800/-. It is stated that as per the information furnished by the BHEL in their letter dated 27-10-2000 the total quantity of filling material consumed by the petitioner-company is 18,48,078.06 cubic meters. It is further stated that the petitioner-company without obtaining any lease/permit, transported the material illegally for executing the work given to it. We have no reason to disbelieve the averments made in the counter affidavit.

12. The fact remains that the petitioner-company failed to furnish any details whatsoever about the lands purchased by it or taken on lease by it to utilise the earth alone as filling material.

13. The record would disclose that on inspection of the sites from where the material was excavated, it is found that the material excavated is gravel/ordinary clay. The material supplied by all the contractors including the petitioner-company is gravel from the foothills of the areas and ordinary clay from the tank beds.

14. There is a categorical finding by the authorities concerned after inspection of the sources from where the material has been extracted that the material utilised in the work is gravel and ordinary clay. This Court cannot interfere with such findings of fact by the authorities. There is a clear finding that the impugned levy and demand

is for a quantity of 1,78,830 cubic meters of gravel/ordinary clay consumed by the petitioner-company in the execution of the work.

15. The Government while examining the representation of the petitioner-company dated 13-9-2001 gone into the details and considered each and every objection raised by the petitioner-company.

16. It was mainly contended on behalf of the petitioner-company that the Deputy Director of Mines and Geology while issuing the impugned demand notices dated 25-5-2000 and 23-10-2000 committed a grave error and illegality in ignoring the fact that the samples of the material were analysed and found to be earth/soil which is not seigniorable. It was also contended that the specification of filling material was not taken into consideration. It was further contended that the Deputy Director ought to have taken into consideration the analysis reports of the samples furnished by the Andhra University College of Engineering Laboratory certifying that the filling material was only earth/soil. It was also submitted that the Deputy Director ignored the fact that the petitioner-company supplied the earth alone for the years 1998-99 and 1999-2000.

17. The revisional authority having considered the objections of the petitioner-company in detail came to the conclusion that the material supplied by the petitioner-company from hill slopes is gravel and the material supplied from the tank beds is to be regarded as ordinary clay. Both the gravel and ordinary clay have been declared as minor minerals u/s 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 by the Government of India and, therefore, the petitioner-company is liable to pay the seigniorage fee on the entire quantity of mineral supplied to BHEL. No demand is raised as against the petitioner-company in respect of the ordinary soil/earth utilised as filling material. The demand was raised against the petitioner-company with regard to the material consumed by it, which is categorized as gravel and ordinary clay, for which seigniorage fee is liable to be charged.

18. With regard to the contention of the petitioner-company that the department has not analysed the sample, the Government came to the conclusion that the nomenclature of minerals can even be decided by way of physical examination by the experts. Chemical analysis will be resorted to only in order to know the grade of the particular mineral. The Government held that irrespective of grade of gravel and ordinary clay, the petitioner-company had used the material without resorting for selective mining; and the entire material in a particular area has been removed by using the proclaims. In such a situation, Chemical analysis has no role to play. It is held in categorical terms that by way of chemical analysis alone minerals cannot be identified. It is even highlighted that in granite as well as clay the chemical constituents remain more or less analogous.

19. The Government while adverting to the contention of the petitioner-company that the specification of the filling material given by BHEL was not taken into consideration by the department observed that the specification given by BHEL in constructing embankment by earth filling includes, morrum, gravel and mixture of these or any other material approved by their engineers. It is observed by the Government that the material obtained from the tank beds is nothing but accumulated clay. The Government came to the conclusion that the specification given by BHEL under item 3.03.01 of the specification itself would not help the petitioner company.

20. The Government, while rejecting the contention that the NTPC having verified the material supplied by the petitioner-company recorded it as ordinary earth and soil, observed that the nomenclature of the mineral has to be decided by the geologists. The Government had authorised the Deputy Director of Mines and Geology, Visakhapatnam as the competent authority to decide about the nomenclature and accordingly the said authority having inspected the sources from where the material has been extracted came to the conclusion that the material utilised by the contractors is partly gravel and partly ordinary clay.

21. With regard to the contention of the petitioner-company that the Engineering Department of Andhra University having analysed the samples found the filling material to be earth/soil and thus there was no scope for any further controversy, the Government held that Andhra University has only analysed the grain size of the material involved in the filling and indicated the percentage of grain size present in the filling material. The reports are given by the Civil Engineers and not by the qualified geologists and, therefore, it has no evidential value.

22. We are constrained to observe that there is no provision in the rules for referring any material for testing by the outside authority. The records made available for the perusal of the Court would disclose that the tests by the Andhra University itself were conducted at the instance of the petitioner-company. It is not possible to rely upon such reports in order to disturb the findings recorded by the Government.

23. Having adverted to all the contentions, the Government in final analysis came to the categorical conclusion that the material supplied by the petitioner-company is to be clearly categorised as gravel and ordinary clay. Both the gravel and ordinary clay are declared as minor minerals, about which there is no dispute whatsoever.

24. The Government further found that since the material supplied by the petitioner-company during the period from 14-5-1999 to 28-6-2000 is gravel and ordinary clay, the seigniorage fee is liable to be charged at the rate of Rs.10/- per cubic meter on the said material. The petitioner-company is accordingly liable to pay the seigniorage fee on gravel and ordinary clay.

25. The petitioner-company did not raise any contention with regard to the imposition of five times penalty over and above the normal seigniorage fee

chargeable on the filling material supplied by it. There is no such objection raised by the petitioner-company in the representation dated 13-9-2001.

26. No other contention is urged.

27. It is very well settled that this Court does not exercise any appellate jurisdiction as against the orders passed by the Government while disposing of the revision petitions under Rule 35-A of the Rules. The decision making process, in our considered opinion, is not vitiated for any reason whatsoever. The petitioner-company has been given adequate opportunity to represent its case. The petitioner-company was even represented by its Advocate. Oral submissions were made with reference to the memorandum of grounds/objections to the demand notice dated 25-5-2000. No relevant material has been eschewed while considering the revision preferred by the petitioner-company. Nor any irrelevant considerations have crept into the mind of the revisional authority. Each and every objection and argument had been carefully scrutinised and analysed in finally reaching to the conclusion that the petitioner-company is liable to pay the normal seigniorage fee and five times penalty thereon for the material supply/consumed by it in the process of the work undertaken by the petitioner-company. The findings and conclusions reached by the Government are based upon the material available on record. The findings, by no stretch of imagination, could be characterised as perverse. The impugned order passed by the Government, in our considered opinion, is not vitiated for any reason whatsoever.

28. The observations made by us while disposing of W.P.Nos.6916, 5683 and 6248 of 2002 preferred by other sub-contractors, insofar as they are relevant, shall be applicable in respect of such common points urged by the petitioner-company. Those reasons and conclusions shall form part of this order

29. In the result, the writ petition fails and shall accordingly stand dismissed. No order as to costs.