

(2013) 10 AP CK 0036

Andhra Pradesh High Court

Case No: Writ Petition No's. 30067 and 30068 of 2013

Hamsa Minerals and Exports

APPELLANT

Vs

The Government of Andhra
Pradesh and Others

RESPONDENT

Date of Decision: Oct. 22, 2013

Citation: (2014) 4 ALD 312

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: C.V. Mohan Reddy for Sri T. Sreedhar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

Since common issues are involved in this batch of Writ Petitions, they are heard and being disposed of together. The petitioners are the holders of mining leases in respect of Black Galaxy Granite in Chimakurthy Village and Mandal, Prakasam District. They have been operating the mines for considerable time. Evidently, the Vigilance and Enforcement Department has taken up an enquiry and allegedly found that the petitioners have not complied with the statutory requirements, such as obtaining Environmental Clearance from the State Level Environment Impact Assessment Authority (for short "SLEIAA"), the consent for establishment (CFE) and the consent for operation (CFO) from the Andhra Pradesh Pollution Control Board (APPCB). The Vigilance and Enforcement Department, which allegedly inspected the mines, has also pointed out certain other deficiencies such as non-erection of permanent boundary pillars around the leased area, violation of covenant-8(7) of the lease deed conditions, non-conduct of mining operations according to the mining plan, failure to separately stack non-saleable granite, non raising of plantations in the leased area, etc.

2. Show cause notices were issued to the petitioners, on the report of the Vigilance and Enforcement Department, by respondent No. 2 to which explanations were submitted by the petitioners. In their explanations, the petitioners have submitted that they have complied with most of the alleged deficiencies pointed out against them. However, by separate but identical orders, respondent No. 2 has directed suspension of the petitioners' quarry operations in purported exercise of his powers under Rule-19(2) of the Granite Conservation and Development Rules, 1999. In cases where CFE/CFO from the APPCB and Environmental Clearance, as per the Environmental Impact Assessment notification, vide S.O.I. 533, dated 14.09.2006, were not submitted, respondent No. 2 has granted three months' time for the petitioners for submission of the same in order to resume the quarry operations. Questioning these orders, the petitioners filed these Writ Petitions.

3. It needs to be noted that in Writ Petition No. 29697 of 2013 filed by a similarly situated mining lessee to that of the lessees in these Writ Petitions questioning an identical order, this Court, while granting time to the learned Government Pleader for Mines and Geology for filing counter-affidavit, passed a detailed interim order on 11.10.2013 in WPMF. No. 36886 of 2013, which is as under.

This is an application to suspend operation of order in proceedings No. 36013/R3-1/2013-4, dated 01.10.2013, of respondent No. 2 whereby he has directed the petitioner to stop quarry operations till submission of a revised Approved Mining Plan in terms of Rule 16(3) of A.P. Granite Conservation & Development Rules, 1999.

A perusal of the impugned order shows that the petitioner submitted a detailed reply to the show cause notice dated 22.7.2013 issued by respondent No. 2 wherein it has informed respondent No. 2 that it has cured all the defects pointed out in the show cause notice. While purporting to consider the reply, respondent No. 2 made the following cryptic statement.

The reply submitted by the leaseholder has been examined in detail and observed that the leaseholder has not rectified all the breaches and hence not satisfactory.

In view of the above and in exercise of the powers delegated vide G.O.Ms. No. 42 Ind., & Comm. (MI) Department, dated 13.01.2000 the quarrying operations for the M/s. Midwest Granite (P) Ltd., is hereby suspended as per Rule 19(2) of GCD Rules, 1999.

In my prima facie opinion, respondent No. 2 has made a casual and perfunctory approach in directing stoppage of mining operations without specifically dealing with the reply submitted by the petitioner on various aspects pointed out in the notice. Respondent No. 2 ought to have visualized that an order of stoppage of mining operations in respect of a mineral such as granite will have far-reaching consequences and such an order cannot be passed in a light-hearted manner without displaying any semblance of responsibility and showing seriousness it

deserves.

The petitioner pleaded that it has nearly 1800 workers working on the Mine and it has to honour sale orders worth about Rs. 50.00 crores. Stoppage of mining operations on the basis of the impugned order passed by respondent No. 2 would, therefore, have serious adverse consequences. Hence, I find the elements of balance of convenience prima facie in favour of the petitioner.

Accordingly, the impugned order is suspended, pending further orders.

4. At the hearing, it has come out that in Writ Petition No. 30069 of 2013, a similar order passed on 12.07.2013, suspending the mining operations, was subsequently revoked by respondent No. 2 by his proceedings No. 15164/R3-1/2013, dated 24.08.2013. It is stated in the said order that the Assistant Director of Mines and Geology, Ongole, reported that the lessee has obtained Environmental Clearance on 30.04.2013; that CFE and CFO from the APPCB is under process; and that respondent No. 2 vide his proceedings, dated 12.07.2013, has given three months' time for submission of Environmental Clearance, CFE and CFO. It was further observed that the lessee in W.P. No. 30069 of 2013 has subsequently submitted CFE. Considering the said facts, respondent No. 2 himself has revoked his earlier order suspending the mining operations.

5. In Writ Petition No. 30102 of 2013, a similar order of revocation, dated 24.08.2013, was passed based on the report of the Assistant Director of Mines and Geology, Ongole, to the effect that the lessee has rectified the breaches pointed out by the Vigilance and Enforcement Department.

6. At the hearing, Sri T. Sreedhar, the learned counsel for the petitioners, submitted that in case of the petitioners in Writ Petition Nos. 30067 and 30068 of 2013, both CFE and CFO were obtained and the same were submitted.

7. Learned counsel further submitted that in Writ Petition No. 30135 of 2013, Environmental Clearance from the SLEIAA was already obtained by the petitioner and grant of CFE and CFO is under process by the APPCB and that in Writ Petition No. 30173 of 2013, proceedings giving Environmental Clearance were issued, but a certificate to that effect is yet to be issued by the SLEIAA and that as soon as such Clearance is obtained, the same will be submitted to APPCB and CFE and CFO will be obtained based on such Certificate. Learned counsel further submitted that in Writ Petition Nos. 30113, 30116 and 30174 of 2013, Environmental Clearance was obtained from SLEIAA, based on which CFE has already been obtained and CFO alone is to be obtained. Learned counsel further submitted that had respondent No. 2 examined the explanations of the petitioners on a case to case basis, he would not have passed the impugned orders, in such a haste, as to stop the mining operations, which will have debilitating effect on the functioning of the petitioners-mines affecting thousands of workers and employees.

8. Learned Government Pleader for Mines and Geology submitted that the State Government has taken a serious view of the lapses indulged in by the mining lessees in the State, affecting the environment and ecology following the judgment of the Supreme Court in [Deepak Kumar etc. Vs. State of Haryana and Others etc.](#), and therefore, based on the report of the Vigilance and Enforcement Department, respondent No. 2 has passed the impugned orders.

9. As observed in the interim order passed by this Court, which is reproduced above, respondent No. 2 has not examined the cases of the lessees with reference to their explanations. A generic order without pointing out the actual deficiencies in each of these cases has been passed by respondent No. 2. While the protection of environment and ecology is of paramount importance, at the same time, the interests of the lessees also need to be protected without compromising on the environment.

10. As noted hereinbefore, respondent No. 2 himself has granted three months' time to the lessees to obtain CFEs and CFOs. Having given three months' time for them to produce CFEs and CFOs, he ought to have permitted them to continue the mining operations considering the fact that these mines are under operation for a considerable number of years without CFEs and CFOs.

11. Indeed, as pointed out hereinbefore, respondent No. 2 has not properly examined whether any of the petitioners possessed CFEs and CFOs. As already pointed out, the petitioners in Writ Petition Nos. 30067, 30068, 30069 and 30102 of 2013 have obtained CFEs and CFOs and the petitioners in Writ Petition Nos. 30113, 30116 and 30174 of 2013 have obtained Environmental Clearance and CFE, while the petitioner in Writ Petition No. 30135 of 2013 has obtained Environmental Clearance and case of the petitioner in Writ Petition No. 30173 of 2013, Environmental Clearance proceedings were issued, but Certificate is yet to be issued.

12. Considering the orders passed by respondent No. 2 himself in case of the petitioners in Writ Petition Nos. 30069 and 30102 of 2013, revoking his earlier suspension order, I do not find any reason why the same benefit shall not be extended to the petitioners in the other Writ Petitions as well.

13. As held by the Apex Court in Vellore Citizens' [Vellore Citizens Welfare Forum Vs. Union of India and others](#), sustainable development needs to be maintained and at the same time the entrepreneurs have to shoulder corporate social responsibility (CSR) which are held to be inseparable twins, as held in [G. Sundarrajan Vs. Union of India \(UOI\) and Others](#), and [M.C. Mehta Vs. Union of India \(UOI\) and Others](#). By stoppage of the mining operations, the mining activities will come to a stand still, throwing the operations of the lessees haywire and putting the interests of thousands of workers and employees living on these operations in jeopardy.

14. On the above facts and circumstances of the case, in order to balance the interests of the State and the lessees, the Writ Petitions are disposed of in the

following terms:

(1) the petitioners shall comply with all the deficiencies as pointed out in the show cause notices issued by respondent No. 2, if they have not already done, within the time permitted by respondent No. 2 in the impugned orders (i.e., three months from the date of passing of the said order);

(2) by the expiry of the three months time, the petitioners shall file compliance reports before respondent No. 2 enclosing all the relevant documents in support thereof;

(3) respondent No. 2 shall thereupon cause an inspection held and issue notices to the petitioners wherever the deficiencies were not complied with and after considering the explanations, if any, that may be filed by the petitioners, he shall be free to pass orders; and

(4) till the process referred to above (i.e., 1 to 3 supra) is completed, the petitioners shall be permitted to carry on the mining operations as per the lease deeds held by them.

As a sequel to disposal of the Writ Petitions, WPMP. Nos. 37345, 37346, 37347, 37348, 37352, 37388, 37399, 37402, 37421, 37463 and 37464 of 2013 are disposed of as infructuous.