

(2014) 04 AP CK 0041

Andhra Pradesh High Court

Case No: W.P. Nos. 31951, 38193, 39265 of 2013, 1657, 1658, 1659, 1697, 1902, 5295 and 5300 of 2014

Koppula Veera Venkata
Satyanarayana Murthy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision: April 11, 2014

Acts Referred:

- Mines and Minerals (Development and Regulation) Act, 1957 - Section 10, 11, 12, 13, 14

Citation: (2014) 4 ALD 33 : (2014) 6 ALT 458

Hon'ble Judges: Nooty. Ramamohana Rao, J

Bench: Single Bench

Advocate: S. Subba Reddy in W.P. No. 39265, Sri Andapalli Sanjeev Kumar in W.P. Nos. 31951, 38193 of 2013, 1902 of 2014, Sri T. Sujan Kumar in W.P. Nos. 1657, 1658, 5295 and 5300 of 2014 and Sri T. Bala Mohan Reddy in W.P. No. 1659 of 2014, Advocate for the Appellant; P. Rajeswari for Respondent No. 5 and G.P. for Mines and Geology for Respondent No. 1, G.P. for Industries and Commerce Counsel for Respondent No. 2, Sri N. Subba Rao for Respondent No. 3 in W.P. No. 31951 of 2013, G.P. For Mines and Geology for Respondent Nos. 1 and 2, Smt. Jyothi Eswar Gogineni for Respondent No. 9, Sri Mangena Sree Rama Rao for Respondent No. 10 in W.P. No. 38193 of 2013, Sri O. Manohar Reddy for Respondent No. 6 in W.P. Nos. 31951 and 38193 of 2013, G.P. For Industries and Commerce for Respondent No. 1, G.P. for Mines and Geology for Respondent No. 2, G.P. for Revenue for Respondent Nos. 3 and 4 and Sri G. Raja Babu for Respondent No. 5 in W.P. No. 1657 of 2014, for Respondent No. 9 in W.P. No. 1658 of 2014, Additional Advocate General/G.P. for Mines and Geology Counsel for Respondent Nos. 1 and 2, G.P. for Revenue for Respondent Nos. 3 and 4, G.P. for Forests for Respondent No. 5 and Smt. Jyotieswar Gogineni for Respondent No. 10 in W.P. No. 1658 of 2014, Additional Advocate General/G.P. for Mines and Geology for Respondent No. 1 and 2, G.P. for Revenue for Respondent No. 3 and 4, G.P. for Forests and Environment for Respondent No. 5 and Sri B. Jayaprabhakara Rao for Respondent Nos. 6 and 7 in W.P. No. 1659 of 2014, The Additional Advocate General/G.P. for Mines and Geology for Respondent Nos. 1 and 2, G.P. for Revenue for Respondent Nos. 3 and 4, G.P. for Forests for Respondent No. 5 and Sri C.V.R. Rudra Prasad for Respondent No. 8 in W.P. Nos. 1658

and 1659 of 2014, G.P. for Mines and Geology for Respondent Nos. 1 and 2 in W.P. No. 1902 of 2014, G.P. for Industries and Commerce for Respondent No. 1, G.P. for Mines and Geology for Respondent No. 2, G.P. for Revenue for Respondent No. 3 and 4 and G.P. For Forests for Respondent No. 5 in W.P. No. 5295 of 2014, G.P. For Industries and Commerce for Respondent No. 1, G.P. for Mines And Geology for Respondent No. 2 and Smt. N. Shoba for Respondent No. 3 in W.P. Nos. 38193 of 2013, 5300 and 1902 of 2014, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Nooty. Ramamohana Rao, J.

All these writ petitions raise a common question relating to grant of extension for quarrying sand by the State Government. However, the facts in W.P. No. 39265 of 2013 only are set out herein below in detail, for convenience sake, as there was no serious dispute on the factual content insofar as other cases are concerned. The case of the petitioner is that he has participated in pursuance to the tenders called for by the Project Director, District Water Management Agency in respect of sand quarrying. It is also his case that he subsequently applied for Reach No. 6, Gopalapuram by enclosing a demand draft for Rs. 5,000/- towards purchase of the application and also further paid an amount of Rs. 16,33,000/- towards minimum assured amount. It appears, more than 1,400 persons have applied for different reaches and nearly a sum of Rs. 100 crores has thus been collected. When the leases of the existing lease holders was extended upto 21.08.2013, W.P. Nos. 22845 and 25115 of 2013 were instituted in this Court. By a common order rendered on 25.10.2013, while setting at naught the notifications, this Court has also set-aside the extension of leases granted in favour of those persons whose lease period expired on 31.03.2013. The case of the petitioner is that since the policy of the State is to allot the reaches by way of draw of lots in terms and in accordance with Rule 9-E and F of A.P. Minor Mineral Concession Rules, 1966, while the petitioner and others were waiting for the notification to be issued, the State Government issued orders through their memo dated 21.12.2013 extending the lease in favour of the existing lessee for a period of six months or till the sand quantity identified is exhausted. Hence, this writ petition is filed. It is also contended that, when W.P. No. 18822 of 2011 and batch of cases were filed alleging depletion of ground water level, all due to heavy illegal sand quarrying operations, the Division Bench of this Court passed restraint orders for sand quarrying operations in the entire State from 01.04.2012 onwards. But however, pursuant to the orders passed by the Supreme Court, permitting sand quarrying, instead of following the policy enunciated in the A.P. Minor Mineral Concession Rules, 1966, as amended from time to time, extension of lease has been granted.

2. The State Government filed a detailed counter affidavit in the matter. It is admitted that the sixth respondent emerged as a highest bidder in the open auction conducted and he did pay the first year lease amount and also the second year lease amount duly enhancing it by 20% over and above the first year lease amount. Operations could be carried up to 31.03.2012 only. In the meantime, the Division Bench directed stay of sand quarrying operations in the entire State as clearance from the Ministry of Environment and Forests, Government of India has not been obtained. When the matter was carried in appeal to the Supreme Court, the Supreme Court granted permission to the State Government to grant sand quarry leases and also their renewal only after obtaining the clearance from Ministry of Environment and Forests. After obtaining the necessary clearance from the Ministry of Environment and Forests, the Government has passed orders renewing the lease period for 22 reaches in Godavari up to 21.08.2013. It is stated that because of the transporters bandh, as part of Samaikhyandra agitation, the balance quantity of sand could not be lifted. The State Government which has collected the lease amounts from the bidders of sand reaches was required to either refund the money or extend the lease period. Hence, after considering the circumstances, the impugned order of extension has been granted.

3. In the aforesaid background facts, the question that is needed to be examined is whether the State Government has the necessary power and is justified in granting extension of leases in favour of the unofficial respondents in the respective cases.

4. Heard Sri S. Subba Reddy, Sri A. Sanjeev Kumar, Sri T. Bala Mohan Reddy, Sri T.V. Jaggi Reddy and Sri T. Sujan Kumar, the learned counsel for the petitioners and Sri C.V. Mohan Reddy, learned senior counsel and Smt. N. Shoba and Sri N. Subba Rao for the respondents. The learned Special Government Pleader attached to the learned Additional Advocate General was heard on behalf of the State Government, while the learned Government Pleader for Industries and Commerce addressed arguments on behalf of the Director of Mines and his other subordinate officers, who are impleaded as respondents.

5. The learned counsel for the petitioners have urged that the orders of extension have been granted in a mechanical and stereotyped fashion. They were all granted on the same day. The Government could not realize the fact that leases have expired initially on 31.03.2013 and after extension has been granted, they expired by 21.08.2013. Therefore, there is no way the respective unofficial respondents can be treated as existing lessees. The clearance granted by the Ministry of Environment and Forests, Government of India has also expired. The existing legal regime, in particular, Rule 9-H clearly spelt out that no extension would be granted and hence there is no competence for the Government to grant extensions now.

6. Per contra, the learned Special Government Pleader attached to the Additional Advocate General would urge that in the A. P. Minor Mineral Concession Rules, 1966, as they stood amended through G.O.Ms. No. 154 Industries & Commerce (Mines-I)

Department dated 15.11.2012, there is no provision for extension or refund of the money deposited by the lessees, whereas, in the rules which stood further amended through G.O.Ms. No. 186 Industries & Commerce (Mines-I) Department dated 17.12.2013, appropriate provision is made in the form of Rule 9-T and hence power is conferred on the State Government to grant extension in favour of the existing lessees.

7. Sri C.V. Mohan Reddy, learned senior counsel appearing on behalf of the learned counsel for the unofficial respondents would contend that there was a marked change in the policy of the State Government. The Judgment of the Division Bench of this Court in [M.V. Siva Prasad and Others Vs. The Government of Andhra Pradesh, Industries and Commerce \(SPIU and Sand\) Department and Others](#), case dealt with the rules, which contained specifically in Rule 9-L prohibition against grant of extension whereas the changed policy of the State as is reflected through the amendments brought through G.O.Ms. No. 186 Industries & Commerce (Mines-I) Department dated 17.12.2013, enables contingent situations to be dealt with by the Government. According to the learned senior counsel, the necessary legal fiction to deal with such contingent situation has been provided for in Rule 9-T and in particular, in Clause 2 thereof. Now, the Government is under an obligation either to refund the money or grant an extension. The money which has already been collected has been appropriated by the State Government and in fact has been spent over various developmental activities undertaken by it. Therefore, refund of the money is out of contemplation. That would be contrary to public interest as well. Hence, the lesser choice of granting extension for quarrying sand has been rightly exercised by the State Government. A legal fiction created, need not be stretched to its logical conclusions for the Court to find out what would be the ultimate choice that should be exercisable by the State. It will also be important to bear in mind that Rule 9-T shall not be read to lead to an absurd result. That is the reason why Rule 9-T talks specifically of the balance quantity of sand. The learned senior counsel would further submit that Rule 9-S, as amended through G.O.Ms. No. 186 Industries & Commerce (Mines-I) Department dated 17.12.2013 is couched in and worded very widely, than what was set out under the earlier regime covered by amendments brought through G.O.Ms No. 84 or G.O.Ms. No. 154. In that view of the matter, the learned senior counsel would submit that the judgments rendered by this Court earlier do not offer any guidance for dealing with the present situation. In fact, paragraph 24 of M.V. Siva Prasad's judgment has set out clearly that since Rule 9-L forms integral part of the A.P. Minor Mineral Concession Rules, the extension cannot be granted. Now that the legal regime has undergone a complete change, duly deleting the provision contained in Rule 9-L, the learned senior counsel would contend that the judgment of the Division Bench in M.V. Siva Prasad's case and the other cases which followed thereafter are not applicable. The learned senior counsel would submit that not only the legal regime prevailing as of now and also clarification issued by the State on 10.01.2014 make the position clear that the

extension can be granted to avoid the necessity of refunding the money to the unofficial respondents.

8. Smt. N. Sobha, learned counsel for the unofficial respondents would submit that when the auction notification was initially issued on 02.04.2011, the entire grant of quarry leases was regulated by the rules as amended through G.O.Ms. No. 84 dated 10.04.2007 and there was no prescription or quantification of the mineral sand to be quarried or lifted from the quarry site. The quarry leases were granted for a period of two years. The lessee could quarry any amount of the mineral available there, subject to the usual restrictions imposed in the grant. Beyond that, there is no restriction with regard to the quantum of sand that can be lifted. Further, the second year lease amount was required to be paid enhancing it by 20% than the first year amount, 45 days prior to the expiry of the first year lease period. Therefore, all such lessees have parted with money, for the second year, much prior to the first year period itself coming to an end. By virtue of the interim order passed by the Division Bench of this Court, all sand quarrying operations have been brought to a halt with effect from 31.03.2012. Only after the Ministry of Environment and Forests granted the necessary clearance, the quarrying operations of sand has been resumed. The loss and injury sustained by the lessees on account of a change of the legal regime shall necessarily result in refund of money to the lessees. Instead of that, the State Government granted the extension of lease period by six months, as the present legal regime, in particular, Rule 9-T contemplated such extensions. Smt. N. Sobha, learned counsel for the unofficial respondents would submit that the exercise of power by the State Government is an absolutely legitimate one.

9. Sri N. Subba Rao, learned counsel appearing for the third respondent in W.P. No. 31951 of 2013 would submit that originally the lease was granted in favour of the third respondent for the period from 01.05.2010 to 31.03.2012. However, the ramp point was cancelled by the Irrigation Department during the year 2012. The representations submitted by the third respondent for fixing the alternative ramp points were not answered at all. For no fault of the lessee, he has been denied his legitimate right of quarrying sand. In those circumstances, the third respondent has preferred a revision under Rule 35-A specifically praying for permission to quarry sand or to refund the money for the unutilized portion. Since monies collected from the third respondent have already been utilized, for developmental activities, the State Government had preferred to grant extension and the Government's power in this regard is clearly traceable to Rule 9-T.

10. Before answering the main question, it is appropriate to notice that while enacting the Mines and Minerals (Development and Regulation) Act 1957, (henceforth referred to "for short as Act"), providing for the development and regulation of mines and minerals under the control of the union, through Section 2 thereof, the Parliament declared that it is expedient in the public interest that the

union should take under its control the regulation of mines and the development of the minerals to the extent provided in the said act. Thus, this declaration is made in terms of entry 54 of List I of the VII Schedule of our Constitution. Section 3 of the Act defined various expressions and in particular, Clause (e) provided for an inclusive definition for the expression Minor Minerals and included therein ordinary sand. Section 4 of the Act specified the regulatory aspects relating to prospecting or mining operations to be carried out. Significantly, Section 14 of the Act made it very clear that the provisions contained under Sections 5 to 13, both sections inclusive, shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Section 15, conferred power on every State Government, by notification to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Therefore, the legislative sanction on the State Government to make rules concerning Minor Minerals is therefore intended to enable the State Government to prescribe such restrictions and regulatory methods as are required insofar as minor and minerals are concerned, by taking into consideration what has been contemplated by Sections 5 to 13 of the Act in respect of other minerals concerned. It is in exercise of this power available under Subsection 1 of Section 15 that the A.P. Minor and Mineral Concession Rules, 1966, (henceforth referred to as "Rules") have been promulgated by the Governor of Andhra Pradesh regulating the grant of leases in respect of minor minerals in the State of Andhra Pradesh. The rules were originally notified through G.O.Ms. No. 1172 Industries Department on 04.09.1967. Rule 5 made it very clear that no person shall undertake quarrying of any mineral in any area, except under and in accordance with the terms and conditions of a quarry lease or permit granted under these rules. The Rules have suffered periodical amendments, significant amongst them being those introduced through G.O.Ms. No. 238 Industries and Commerce Department dated 09.07.1992 and G.O.Ms. No. 1 Industries and Commerce Department dated 01.01.2001. To exclusively deal with grant of quarrying leases with regard to sand bearing areas, necessary amendments in the form of Rules 9-B to Rule 9-Z have been introduced through G.O.Ms. No. 84 Industries and Commerce Department dated 10.04.2007. It is significant to note that Rule 9-B(1) made it clear that all sand bearing areas in the State shall be leased out by sealed tender-cum-public auction reach or mandal wise, wherever applicable by the auctioning authority, as specified under Rule 9-H(1) financial year wise, in any case, for not more than 2 years with an yearly enhancement of 20% of the knocked down amount and subject to the conditions prescribed in the notice of sealed tender-cum-public auction prescribed in Rule 9-D. Rule 9-E required every person who intends to obtain a lease for quarrying sand in a reach or mandal as notified under Rule 9-D shall submit sealed tender for the grant of lease in the prescribed form to reach the Assistant Director of Mines and Geology concerned before the date and time specified in the notification. Rule 9-1 dealt with the matters relating to deposit of the lease amount and the consequential execution of lease agreement. Rule 9-K conferred certain powers on the State Government,

inter alia to cancel the auctions conducted or confirmation orders issued or to condone the delay in issue of confirmation orders or execution of lease deed or to issue orders/clarifications on any subject not specifically mentioned in implementation of the rules. Significantly, Rule 9-L has spelt out that the successful tenderer or bidder shall have no claims for any compensation due to floods or heavy rains or any other situation and extension of the lease period shall not be granted under any circumstances. Therefore, if Clause I of Rule 9-B is read along with Rule 9-L, of the amended rules introduced through G.O.Ms. No. 84 dated 10.04.2007, it emerges crystal clearly that all sand bearing areas shall be leased out by sealed tender-cum-public auction, reach or mandal wise, financial year wise and in no case for more than 2 years at a time and that no extension of the lease period shall be granted under any circumstances. Therefore, a clear cut injunction against the State has been conceived and contemplated by these rules. The total lease period that can be conferred upon any person, for any sand bearing area, who participated in the sealed tender-cum-public auction process can at best be for a period of two years. It cannot be prolonged for a day further. Therefore, under Rules 9-B(1) read with Rule 9-L, there is no power available to the State Government to grant any extension of the lease period beyond the second financial year, which draws to a close by the 31st of March every year.

11. Rule 9-L also contemplated for a different contingency. It has imposed a burden on the successful tenderer or bidder from making any claims for any compensation due to floods or heavy rains or for any reasons arising from any other situation. Therefore, all the lessees, who participated in a sealed tender-cum-action process initiated under the rules, particularly the amended regime through G.O.Ms. No. 84 dated 10.04.2007, can make no claim whatsoever for compensation for any possible loss suffered by them due to any situation. Pausing here for a moment, all those successful bidders, who transformed themselves into lessees, are bound by this legal regime. They cannot make any claim for compensation for any possible loss or injury sustained by them on account of any situation, hence, including the alleged bandh observed by the transporters as part of Samaikyandhra agitation. The State Government therefore could not have entertained any such claim for any type or form of compensation from the lessees, who secured such rights by participation in public auction-cum-sealed tenders. By parity of reasoning, even if this Court has granted an injunction from quarrying sand from any source in the State, even such a situation gets attracted to the injunction contemplated against the successful tenderer who transformed into a lessee by the first part of Rule 9-L. Hence, the question of refunding monies to the lessees, which is one form of compensation, is an issue which is out of contemplation and is in fact not entertainable at all by the State. The basic premises upon which the State has proceeded in granting extensions in favour of the lessees, through the impugned order, in my opinion, is a totally erroneous one and it is in direct conflict and contravention of the regime contemplated by Rule 9-B(1) read with Rule 9-L, as it stood prior to amendment

brought about by G.O.Ms. No. 154.

12. It will also be profitable to recall as to how the Division Bench which decided W.A. No. 359 of 2010 by its judgment dated 13.09.2010 dealt with the contention canvassed before it that the State Government is not denuded of the power to grant extension of lease in the following words:

8. Sri E. Manohar, the learned Senior Counsel would contend, relying upon the Judgment of a learned Single Judge of this Court in [The Krishna Country Canal Boat Workers and Labour Contract Co-operative Society Ltd. Vs. The Assistant Director of Mines and Geology,](#); and of the Supreme Court in [Beg Raj Singh Vs. State of U.P. and Others,](#) that notwithstanding the judgment of the learned Division Bench of this Court in M.V. Siva Prasad (supra), the State is not denuded of the power to grant extension of lease if the earlier lease period is hyphenated or interdicted wholly or partly on account of the irregular and irrational revisional exercise of power by the State Rule-35A of the Rules. This contention does not commend acceptance by this Court.

9. Rule 9(L) of the Rules reads as under:

The successful tenderer or bidder shall have no claims for any compensation due to floods or heavy rains or any other situation and extension of the lease period shall not be granted under any circumstances.

10. In M.V. Siva Prasad (supra), in an opposite though not identical factual context, it was contended by the State that Rule-9K(3) empowered the State Government to grant extension of the period of the lease. This Court interpreting Rule 9L held that the apparent power of the State under Rule 9K would not over reach the specific provisions of Rule 9L and authorise extension of the lease, beyond the term of the lease. It also requires to be noticed that Rule 9L comprises two facets. One facet of the rule disables a claim by the successful tenderer or bidder for any compensation due to floods or heavy rains. The second aspect of the rule disentitles grant of extension of the lease under any circumstances. The prohibition of granting extension of lease under any circumstances has a comprehensive trajectory and includes all circumstances including a fact situation where the earlier lease period was inoperative on account of grant of stay in a revision, under Rule 35A. The underlying philosophy of Rule 9L appears to be recognition of the dynamic and inflationary nature of lease amounts obtainable by the State for quarrying of Sand and the consequent revenue increment over the years. The clear directive of Rule 9L prohibiting the grant of extension of lease under any circumstances is a clear limitation on the power of the State or the competent authority, as the case may be.

11. In Krishna Country Canal Boat Workers and Labour Contract Cooperative Society Ltd., (supra), a learned Single Judge had observed that the provisions of Rule 9L would not be applicable to a case where quarry operations are interdicted on account of interim orders passed by this Court. With respect, we are unable to

accept this interpretation of the provisions of Rule 9L of the Rules. The phraseology of Rule 9L is clear and unambiguous and provides no invitation for an exclusionary interpretation. The provision must be given its natural and grammatical meaning. There is no ambiguity in the language of Rule 9L which warrants different interpretations in different fact situations. The rule unambiguously prohibits grant of extension by the State or other competent authority, under any circumstances.

(Emphasis is brought out by me)

13. The State is a party to this ruling and hence it is bound in all respects by this reasoning. Even if the 2 year lease period is interdicted due to grant of an injunction order by a Division Bench of this Court, even in such circumstances, no extension of lease period could have been granted nor was any claim for any kind of compensation entertainable.

14. This calls for to notice the change of the legal regime. The State Government amended the rules through the notification issued in G.O.Ms. No. 154 Industries and Commerce Department dated 15.11.2012. Through this amendment, brought into force on 15.11.2012, the earlier Rules 9-B to 9-Z have been substituted with a new set of rules. The new Rule 9-D dealt with the identification of sand bearing areas in IV, V and above order streams. Clause 3 thereof mentioned that in case of IV and V and above order, streams/rivers, the respective Divisional/District Authority shall take up joint inspection to fix the boundaries, assess the sand in terms of quantity and study the environmental aspects with the Department of Ground Water, Irrigation/River Conservator, Department of Mines and Geology, A.P. Pollution Control Board, Panchayat Raj & Rural Development and Revenue Departments. Thereafter, Clause 4 specified that feasible sand bearing areas for river bed extraction/open extraction and underwater excavation of sand shall be notified on the notice board for publicity in the concerned Gram Panchayat, Mandal Parishad and Zilla Parishad offices as well as at Tahsildar/Revenue Divisional Officer and District Collectorate. Thereafter, Clause 5 specified that the Member Secretary to District Authority shall obtain required clearances for feasible sand bearing areas. Then, as per Clause 7, the District Authority shall arrive at minimum assured amount for each of the feasible sand bearing areas based on the quantity assessed by multiplying it with the seigniorage fee per cubic meter as per the scheduled rate. Then, as per Clause 8, the District Authority shall fix prices of sand at stockyard as per prevailing standard scheduled rate plus not more than 20% thereon. Rule 9-E dealt with inviting applications for allotment of sand bearing areas by draw of lots. Rule 9-G dealt with the allotment of in Stream/underwater sand bearing areas in a similar manner. Rule 9-H detailed the responsibilities of the allottee. Rule 9-H(1)(xv) reads as under:

(xv) have no claims whatsoever under any circumstances for; extension of agreement for extraction of sand; any compensation for non-operation due to floods or heavy rains or any other situation during the period of extraction.

The above clause, in its content and scope is virtually the same as is contained in Rule 9-L of the legal regime prevailing prior to these amendments brought through G.O.Ms. No. 154. insofar as bar of entertaining claims from lessees are concerned. Hence, all such persons (allottees) who are covered by the sweep of the amendments brought about through notification contained in G.O.Ms. No. 154 dated 15.11.2012 cannot make any claim whatsoever under any circumstances either for extension of agreement for extraction of sand or for payment of any compensation for non-operation of the quarrying site arising out of any other situation. Therefore, the State Government cannot entertain any claim from any party for grant of extension of the permission for quarrying sand or for payment of any compensation for non-operation of the quarrying site for any other situation including for reasons of judicial intervention or the so called transporters bandh. Hence, any such exercise indulged in by the State Government has to be necessarily declared as not merely as an illegal exercise but an exercise which lacks sanction and authority of law.

15. Let us examine now the further amendment, and its effect, brought about through notification contained in G.O.Ms. No. 186 Industries and Commerce (Mines-I) Department dated 17.12.2013. These rules have been promulgated in supersession of the rules brought in through G.O.Ms. No. 154 dated 15.11.2012. These amended rules have been brought into force on 17.12.2013. The present Rule 9-B dealt with the regulation of extraction/disposal of stream/river sand. Rule 9-D dealt with the identification of sand bearing areas in IV, V and above order streams. Rule 9-E dealt with the procedure for inviting applications for allotment of sand quarry by draw of lots. Rule 9-H once again provided for the responsibilities of the allottee. Rule 9-H(1)(xii) reads as under:

(xii) have no claims whatsoever under any circumstances for; extension of agreement for extraction of sand; any compensation for non-operation due to floods or heavy rains or any other situation during the period of extraction.

16. Virtually, the latest Rule 9-H(1)(xii) is verbatim the same as contained in Rule 9-H(1)(xv) of the rules introduced through G.O.Ms. No. 154 dated 15.11.2012. Consequently, the scope and content of the present Rule 9-H(1)(xii) cannot be any different from the one which is contained in Rule 9-H(1)(xv) of the Rules introduced through G.O.Ms. No. 154 dated 15.11.2012, and spelt out in clear terms in the preceding paragraphs.

17. It is appropriate to notice Rules 9-S and 9-T of the present legal regime. They read as under:

9-S Powers to Issue Orders/Clarifications/Guidelines:

The Government shall be authority to issue clarifications/guidelines or relaxation orders from time to time, in the implementation of these rules.

9-T Saving Clause

1. Leases which have not yet started shall be governed by the terms and conditions of these Amendments and the amounts, if any, remitted as per earlier policy shall be refunded.

2. Leases under operation shall be deemed to be governed by these amendments and the balance amount collected under the earlier policy shall be ordinarily refunded, except in those cases wherein, the Government in the interest of revenue generation decides otherwise and allows extraction of the balance quantity by the lease holder after obtaining statutory clearances.

Such quantity and area which is feasible as per A.P. W.A.L.T.A. Act & Rules shall be permitted for extraction of Sand for a period of one year as per 9-E(2). The amount for such quantity will be adjusted and the remaining amount shall be refunded during the current financial year unless otherwise extended further by Government, on case to case basis.

Rule 9-S makes it clear that the Government shall be the authority to issue clarifications, guidelines or relaxation orders from time to time in implementation of these rules. The most significant words found in this rule are contained in the later half. Therefore, any clarification or guideline that the Government might consider issuing in furtherance of this power contained in Rule 9-S must be necessarily directed towards the end of securing implementation of these rules. In other words, no clarifications or guidelines or relaxation orders can be issued which might result in the present rules not being given effect to. Therefore, there is a clear limitation contained on the exercise of power by the State Government to issue any clarifications or guidelines. So long as those guidelines are directed towards the end and objective of implementation of the rules, they fall in line with the legal regime. If, on the other hand, a clarification or a guideline which tends to dilute or negotiate the implementation of the rules, that will be contrary to the scope of the power conferred by the rule making authority on the Government. Any such dilution falls outside the limits of law called Ultra Vires. It is appropriate to notice that the Government is subordinate to the rule making authority herein. Therefore, the power conferred by the rule making authority on such subordinate entity is only intended for securing the ultimate objective of implementation of the rules, but not securing the opposite of it. When the rule contemplated grant of relaxation orders also, even then, such relaxation orders must be directed towards the end of securing the implementation of the Rules by removing the hardship, if any, faced by an individual in the matter of compliance with the rules. Therefore, the objective behind Rule 9-S is ultimately to secure implementation of the rules but not, any deviation or negation of the content of the rule.

18. When we turn to examine the saving clause contained in Rule 9-T, it can be noticed that it has clearly provided for two contingent circumstances;

i) Cases where leases which have not yet started and

ii) Cases where leases are under operation.

19. There is not much difficulty to decipher the content of Clause (1) of Rule 9-T. It clearly deals with cases where leases have not yet started. This Clause (1) declared that such leases shall be governed by the terms and conditions contained in these amendments and the amounts, if any, remitted as per the earlier policy shall be refunded. It means, all such leases which have not yet started by 17.12.2013, the date on which the new legal regime was ushered in through the notification contained in G.O.Ms. No. 186, cannot be permitted to undertake any quarrying operations of sand. The rationale behind this is very simple. Leases were earlier granted prior to the legal regime introduced through G.O.Ms. No. 154 by inviting sealed tenders-cum-bids. The successful tenderer and bidder must necessarily execute the lease deed within the time limits specified in the confirmation order granted in his favour. Failure to execute such a lease deed would not transform his position from that of the best bidder to that of a lessee. Consequently, he cannot operate or carry out quarry lease. In such cases, whatever money that has been remitted by him shall become refundable, provided under the legal regime prevailing prior to G.O.Ms. No. 154, the successful tenderer-cum-bidder is not at fault. If, on the other hand, the fault lies at his door step, in not executing the lease deed and commencing the quarrying operations, he cannot even be refunded any money as per Clause 1 of Rule 9-T.

20. Let us now examine Clause 2 of Rule 9-T. Leases under operation shall be deemed to be governed by these amendments and the balance amount collected under the earlier policy shall be ordinarily refunded, excepting those cases wherein the Government in the interests of revenue generation decides otherwise and allows extraction of the balance quantity by the leaseholder after obtaining statutory clearances.

21. In this context, I would consider it appropriate to extract the stand adopted by the State Government in paragraph 7 of their counter affidavit (filed in W.P. No. 39265 of 2013):

7. It is submitted that the judgments referred to in the Writ Petition are not as all applicable to the facts and circumstances of the present case. Neither Rules 9-H(XV) of G.O.Ms. No. 154 dated 15.11.2012 or 9-H(xii) are applicable in respect of leases granted by conducting public auctions and these are applicable only the lease hold rights granted by conducting draw of lots, wherein quantity and amount if fixed. The lease holder, who participated in the auction and quoted highest bid amount than notified is called "Highest Bidder", whereas, person who gets lease hold rights under lottery system is called "ALLOTTEE". Hence, a question of extension does not arise in case of Allottees, but not highest bidders. Leases under operation means leases granted under G.O.Ms. No. 84 dated 10.04.2007, subsequently it was

amended vide G.O.Ms. No. 154, dated 15.11.2012. When the G.O.Ms. No. 154, Industries & Commerce (Mines-I) Department, dated 15.11.2012, came into force the lease are under operation and subsequently, the said G.O.Ms. No. 154, Industries & Commerce (Mines-I) Department, dated 15.11.2012 has been revised with certain amendments vide G.O.Ms. No. 186, Industries & Commerce (Mines-I) Department dated 17.12.2013 came into force, as per Rule 9-T the Government have powers to pass orders, accordingly, the Government in exercise of its powers passed orders by giving sand instead of money.

22. The State Government has attempted to draw a distinction in the status of the quarry grant holders. According to the State Government, those who have participated in sealed tender-cum-public auction system, the grantee is initially identified as the highest bidder and thereafter becomes a lessee whereas those who participated under the legal regime introduced through G.O.Ms. No. 154, he becomes first an allottee and then becomes a lessee. Based on this distinction, it is contended that the expression "Lessees under Operation" found in Clause 2 of Rule 9-T, of the latest regime introduced through G.O.Ms. No. 186, means those who are granted the leases under the regime of Rules introduced through G.O.Ms. No. 84 dated 10.04.2007. What the State Government has missed out in this process was that under the legal regime prevailing through G.O.Ms. No. 84 dated 10.04.2007, no lease period can ever stand extended beyond the maximum period of two financial years. It can be for a lesser length of period and secondly, there is no scope whatsoever for a claim for refund of money by the lessee. Therefore, all such leases which were granted under the legal regime prevailing through G.O.Ms. No. 84 would draw to a close automatically by the end of the second financial year. As a matter of fact, all the respondents in all these cases have been granted leases pursuant to the auction notifications issued between March to August 2011 (16.08.2011 so far as East Godavari District is concerned). All the leases were to expire by 31.03.2013. Therefore, there was no provision for granting any extension of such lease period beyond 31.03.2013 for any reason whatsoever. I have already indicated supra that any such grant of extension is clearly contrary to Rule 9-B(1) read with Rule 9-L of the legal regime prevailing through G.O.Ms. No. 84. In that view of the matter, the lessees whose term of lease expired by 31.03.2013, cannot be treated as on 17.12.2013 as "Leases under operation" and hence the question of ordinarily refunding the balance amount collected would not also arise. If a lease granted under a statutory regime is brought to an end by efflux of time, such person becomes a former lessee but certainly he cannot be called or recognized as a "Lessee". It is appropriate to notice that in terms of the legal regime prevailing through the notification contained in G.O.Ms. No. 84, the quantum of lease amount is never linked to the quantity of sand available or liable to be excavated from the leased out area. Hence, the question of any balance amount left out to the credit of the lessee would not arise at all. The amount is collected for grant of the lease hold rights on an annual basis. Therefore, the question of apportioning of money

vis-à-vis the quantity of sand either available or liable to be quarried from the leased out area has no relationship whatsoever under the legal regime prevailing under G.O.Ms. No. 84 introduced Rules. The concept of balance amount is an alien one to the legal regime prevailing under the notification issued through G.O.Ms. No. 84. There is no valid substratum for the State Government to concede, in principle, that the balance amount collected from the lessees of G.O.Ms. No. 84 regime is liable to be ordinarily refunded. Therefore, there is no way Clause-2 of Rule 9-T confers any power on the present government to grant extensions, insofar as leases covered by the legal regime of G.O.Ms. No. 84.

23. Let us look at it from a different perspective. Let us assume for a minute that the balance amount refundable is what is traceable to the new concept introduced through the notification contained in G.O.Ms. No. 154. But however, this Court had occasion to consider the impact of the legal regime introduced through notification contained in G.O.Ms. No. 154, in its judgment rendered on 25.10.2013 in W.P. No. 25115 of 2013 and batch of cases. My Learned Brother Justice Ramesh Ranganathan held as under:

As Rule 9-L of the previous rules is in pari-materia with Rule 9-H(1)(xv) of the present Rules, and Rule 9-S (2) of the Rules now in force is similar to Rule 9-K (3) of the earlier Rules, the law declared by the Division Bench of this Court in M.V. Siva Prasad, applies squarely to the facts of the present case, and the Government must be held not to have the power, under any circumstances, to grant extension of leases.

24. When once this Court has declared that the Government must be held not to have any power to grant extension of leases, as per the legal regime prevailing pursuant to the G.O.Ms. No. 154, any possible link which the State Government seeks to place on Rule 9-T(ii) to the legal regime introduced through G.O.Ms. No. 154 also must necessarily fall to ground.

25. The consistent analysis by this Court of the legal regime contained through notifications in G.O.Ms. No. 84 dated 10.04.2007 and G.O.Ms. No. 154 dated 15.11.2012, made it explicitly clear that the question of grant of extensions of the lease hold rights for any reason whatsoever and claims for any type of compensation would not arise at all and out of contemplation by the legal regime, the question of conceding any such power to the State Government now is equally untenable. This apart, no fresh life or substance can be introduced into a lease which has already expired. Leases can be brought to an end in a variety of ways and one of the well known methods is by fixation of specific time period. When the legal regime prevailing prior to the notification issued in G.O.Ms. No. 186 dated 17.12.2003 specifically provided for a lease to come to an end by the end of the second financial year, as on 17.12.2003, no such lease can still be said as surviving or subsisting. Therefore, the State Government through the impugned extensions has infused fresh lease of life by conferring a privilege of quarrying sand by giving a

liberal departure to the legal regime.

26. Repeatedly, this Court has made the legal position clear to the State Government that no extension of lease can be granted for quarrying the minor mineral sand, but yet, the State Government went ahead and granted extensions of lease in favour of few others. I do not know whether it is by an accident or coincidence that all the beneficiaries of extension orders have approached the Hon"ble Minister for Mines & Geology, Government of Andhra Pradesh on the same day i.e. on 02.09.2013 and the Hon"ble Minister endorsed them on the same day for taking necessary action. Thereafter State Government has either by design or default or deliberately, led itself into believing that the legal regime required it to refund certain amounts to the lessees whereas, this Court has consistently deciphered the legal regime and made it clear to the State government that there is no such obligation whatsoever on the part of the State Government to refund any such monies. It was also further made clear by this Court consistently that no claim for any kind of compensation can be laid by the lease holder under any circumstances. In spite of this clear and categorical pronouncements of this Court, one fails to grasp as to why the State Government suffered from the delusion that it had to refund certain monies to the lease holders due to the change in the legal regime. A mere look at the impugned order dated 21.12.2013 (which is identically worded in all cases) makes this very clear:

The attention of the Director of Mines & Geology, Andhra Pradesh, Hyderabad is invited to the reference cited. He is informed that the request of M/s. Swapna Sand Quarries, W.G. District for extending the lease period in Karugorumilli Sand Reach for one more year, duly adjusting the amount lying with department instead of refunding the balance amount, has been examined keeping in view the Rule 9-T(2) of G.O.Ms. No. 186, Dt. 17.12.2013, Government hereby decided to grant permission for quarrying operations in Karugorumilli Sand Reach by extending the lease period for six (6) months only to excavate the balance quantity of 14,600 cum (or) till the sand quantity is exhausted whichever is earlier, duly adjusting the amount lying with department instead of refunding the balance amount.

2. The Director of Mines & Geology, Hyderabad is requested to take necessary action accordingly.

SABYASACHI GHOSH
SECRETARY TO GOVERNMENT

27. Possibly, the State Government in the process has compromised on the elements of public interest. It cannot be ruled out that the State Government has deliberately erred in its judgment in granting extensions, as no where did the notings in the file (made available by the learned Special Government Pleader) draw the attention of the decision making authority about the ratio laid down by this Court in various cases decided earlier with regard to grant of extension of lease

periods and the non entertainability of the claims for compensation by the lessees. The State's interests in the process have been deliberately sacrificed. Grant of every power springs from trust and confidence. Hence, exercise of every such power must be carried out diligently and after consulting all relevant factors. It is only appropriate to notice that in the representation dated 02.09.2013, made to the Minister, Sri P. Satyanarayana, Managing Partner of M/s. Swapna Sand Quarries has stated, inter alia as under:

In this connection, I submit that the period of quarry lease expired on 21.08.2013, but there is still balance quantity of 14,600 cubic meters of approved quantity of sand available, apart....

(Note:- The petitions submitted by all other lessees have also contained a similar statement, as they are all stereotyped ones).

But, the note file did not even refer to them as former lessees or ex-lessees. The responsibility and accountability hence has got to be fixed in this regard on all people who had played the necessary role in taking the decision which resulted in the impugned order. A repeated error committed by the State Government cannot be brushed aside lightly, as an honest error particularly when it is resulting in a bountiful of benefits to the beneficiaries and cascading consequences to the State's interests. Therefore, all the public servants who have not helped in arriving at a correct decision must be rendered accountable for their lapse and failures in that regard. The ultimate decision making authority must be made accountable for the decision taken. I, hope and trust, that the State Government will concentrate its energies in this direction.

28. I am, for the foregoing reasons unable to find any of the contentions canvassed on behalf of the respondents as tenable.

29. All the impugned orders are set at naught and it is declared that the State Government lacks power to grant any extensions of quarry leases for the minor mineral sand even under the current legal regime. The State Government shall forthwith stop all such lease holders from quarrying sand any further. The State Government shall ensure that sand quarry operations henceforth can be carried out strictly in accordance with the legal regime prevailing through the notification contained in G.O.Ms. No. 186 Industries & Commerce (Mines-I) Department dated 17.12.2013.

30. All the writ petitions are accordingly allowed, but however without costs. In W.P. No. 1657 of 2014, a letter dated 01.04.2014 was circulated to the learned counsel for the petitioner after the hearing is over, seeking permission to withdraw the writ petition and the permission is hence declined.