

Telangana High Court

J. Lakshmana Rao vs Prl. Secy., P.R. Dept. 5 Ors. on 17 August, 2018

Bench: M.S.Ramachandra Rao

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.1 of 2017 (WVMP.No.1002 of 2017
&
I.A.No.2 of 2017 (WVMP.No.3756 of 2017)
in
WP.No.30956 of 2016 & WP.No.30956 of 2016

COMMON ORDER:

Heard the counsel for petitioner, the learned Government Pleader for Panchayat Raj for respondent nos.1, 2 and 5, the learned Government Pleader for Revenue for respondent nos.3 and 4, and the learned Government Pleader for Mines and Geology for respondent no.6.

2. The petitioner has filed this Writ Petition seeking a Writ of Mandamus challenging the Memo No.3141/Pts.III/A1/2015 dt.16.11.2015 passed by the State of Andhra Pradesh (1st respondent herein) and the consequential order in Rc.No.1961/2014 A1, dt.18.12.2015, passed by the District Collector, Visakhapatnam (3rd respondent herein), and the order in Rc.No.285/2016/A dt.29.07.2016 of the Tahsildar, Nathavaram Mandal, Visakhapatnam (4th respondent herein).

3. The petitioner herein belongs to 'Scheduled Tribe' Community.

4. He had made an application to the Secretary, Commerce and Industries Department of the Government of Andhra Pradesh for grant of mining lease for Laterite mineral in an extent of 199.00 Hectares in the un-surveyed hill portion of Bhamidika Village, Hamlet of MSR,J ::2:: wp_30956_2016 Sarugudu Gram Panchayat, Nathavaram Mandal, Visakhapatnam, which falls in a Schedule Area.

5. On receipt thereof, a survey was conducted by the Assistant Director of Mines and Geology, Anakapalle on 29.09.2009 and a report was submitted by him to the Director of Mines and Geology, Government of Andhra Pradesh, Hyderabad (6th respondent).

6. The 6th respondent then submitted a report to the Government on 09.07.2010 mentioning that (i) the Tahsildar had stated that the Sarpanch of the Gram Panchayat, Sarugudu Village expressed 'No Objection' for grant of mining lease to the petitioner for the said land and (ii) that a resolution dt.23.07.2009 had also been passed by the said Gram Panchayat in petitioner's favour; and that the report also mentioned that (iii) the Tahsildar issued 'No Objection Certificate' for grant of mining lease for 121.00 Hectares in the said village in petitioner's favour and certified that the petitioner belongs to 'Schedule Tribe' Community.

7. The Geological Survey of India also conducted survey and submitted a letter on 07.06.2010 to the Government.

8. Taking into consideration the report of the 6th respondent, the Principal Secretary, Mines Department, issued proceedings in Memo No.10474/M.iii(2)/2010-2, dt.12.10.2010, granting mining lease for (20) years in petitioner's favour for the said land subject to submission of Consent For Establishment from the Andhra Pradesh MSR,J ::3:: wp_30956_2016 Pollution Control Board, Environmental Clearance from the Ministry of Environment and Forest, and subject to satisfaction of Mineral Concession Rules, 1960 and Mines and Minerals (Development and Regulation) Act, 1957, and also subject to submission of approved mining plan under Rule 22(4) of the Mineral Concession Rules, 1960.

9. The Zonal Joint Director of Mines and Geology issued proceedings in Lr.No.5042/M/2010 dt13.12.2010 in exercise of powers under sub-Rule 4(a) of Rule 22 of Mineral Concession Rules, 1960 approving the mining plan for Laterite mining in an extent of 121.00 hectares.

10. The petitioner then made an application to the Andhra Pradesh Pollution Control Board for grant of permission. The said authority then conducted a public hearing on 17.11.2011 at the Mandal Praja Parishad School at Errakanapalem Village, Nathavaram Mandal, Visakhapatnam District, and the Joint Collector and Additional District Magistrate and the Environmental Engineer, Andhra Pradesh Pollution Control Board supervised the proceedings. During the public hearing, some persons doubted the social status of the petitioner as a 'Schedule Tribe'. The proceedings of the meeting were forwarded to the Director, Technical, Ministry of Environment and Forest, New Delhi by the Environmental Engineer, A.P. Pollution Control Board in Lr.No.1907/PCB/RO-VSKP/2011-844 dt.03.08.2012.

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11. The Government of India, Ministry of Environment, Forest and Climate Change Impact Assessment Division then issued proceedings No.J-11015/379/2010-IA.ii(m), dt.17.11.2014, granting environmental clearance to petitioner.

12. The Andhra Pradesh Pollution Control Board also issued order No.7844-VSP/APPCCB/ZO-VSP/CFE/2014-1192 dt.04.12.2014, granting Consent For Establishment.

13. It is important to note that provisions of the Mines and Minerals (Development and Regulation) Act, 1957 were amended and the Central Government issued a notification under Section 3(3) of the said Act on 10.02.2015, declaring 31 minerals as minor minerals. This notification excluded laterite from list of 'minor minerals'.

14. As the Director of Mines and Geology did not execute mining lease in petitioner's favour, petitioner filed WP.No.22339 of 2016 in this Court and sought a Writ of Mandamus to declare the action of 2nd respondent therein in not passing orders on grant of mining lease in his favour despite compliance of conditions imposed under the Letter of Intent, as illegal, arbitrary; and consequently to direct the 2nd respondent therein to pass orders on the grant of mining lease in petitioner's favour pursuant to the Lease Proposal made under Memo No.10474/M.III(2)/2010-2 dt.12.10.2010, issued by the Industries and Commerce (Mines) Department of the State of Andhra Pradesh in support of the subject land.

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15. The said Writ Petition was disposed of on 15.07.2016, and a direction was given to the Director of Mines and Geology, Andhra Pradesh, Hyderabad to pass appropriate orders on petitioner's application seeking grant of mining lease for excavating Laterite in the said land preferably within three (03) weeks.

16. In spite of the said order being received by the respondents in August, 2016, nothing was done.

17. In the meantime, on a complaint made that petitioner did not belong to 'Schedule Tribe' Community to the then Minister for Panchayat Raj in 2014, the matter was referred to the District Collector.

18. The Revenue Divisional Officer, Narsipatnam, Visakhapatnam District, then addressed a letter to the Assistant Director (Mines and Geology), Anakapalle to keep in abeyance further action until finalization of petitioner's caste status by the District Level Scrutiny Committee.

19. Subsequently, the District Level Scrutiny Committee verified the caste status of the petitioner after conducting enquiry under the Andhra Pradesh SCs, STs and BCs, Issue of Community, Nativity and Date of Birth Certificate Rules, 1997, and certified that the petitioner belongs to 'Schedule Tribe' Community.

20. The District Collector, Visakhapatnam then issued proceedings in Rc.No.1745/2014/PCS, dt.07.10.2014 to the Revenue Divisional MSR,J ::6:: wp_30956_2016 Officer, Narsipatnam to communicate the decision of the District Level Scrutiny Committee to the petitioner.

21. Again a complaint was made to the Minister for Panchayat Raj that the petitioner tampered and manipulated Panchayat Resolutions, 'No Objection Certificate', etc., and the Minister directed the Commissioner of Panchayat Raj and Rural Development to conduct enquiry into the matter. The latter directed the District Panchayat Officer, Visakhapatnam to conduct enquiry and to submit a report.

22. The District Panchayat Officer, Visakhapatnam submitted a report stating that the Sarugude Gram Panchayat maintained two sets of Registers, i.e., - Bind Register and Ordinary Register, and they had not conducted meetings up to 30.10.2009, that a meeting was conducted on 30.10.2009 and the resolutions are there in the second register. It is also stated that Resolution dt.23.07.2009, on which the petitioner relied upon, was not recorded in the first Register and that the second Register is a new Register, that resolutions were written at one time and signatures of Ward Members were taken. It is also stated that the first Register was torn and he recommended to cancel the resolutions.

23. Since under Section 246 of the Andhra Pradesh Panchayat Raj Act, 1994, the Government is the competent authority to take such action, the 1st respondent issued show-cause notice dt.12.03.2015 to the Sarugudu Gram Panchayat to show-cause why action should not be taken for cancellation of the Resolution dt.23.07.2009.

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24. After considering the response of the President and Upa Sarpanch of the Gram Panchayat, an order dt.16.11.2015 was passed by 1st respondent stating that 'No Objection Certificate' was issued contrary to the procedure laid down in the Andhra Pradesh Panchayat Raj Act, 1994, and consequently directed to cancel all permissions given on the ground that they were based on manipulated, fictitious and vague resolutions said to have been passed on 23.07.2009 by the said Gram Panchayat. The District Collector was instructed to cancel all consequential orders with regard to permission of laterite leases issued by the Gram Panchayat based on the Resolution dt.23.07.2009 after following due procedure.

25. Basing on the same, the District Collector, Visakhapatnam issued proceedings dt.18.12.2015 canceling the permission for laterite mining lease in favour of the petitioner.

26. The Tahsildar, Nattavaram issued proceedings dt.29.07.2016 instructing the Assistant Director, Mines and Geology, Anakapalle about these events and sated that the recommendation dt.01.08.2009 and 22.09.2009 issued by his Office recommending for grant of mining lease to the petitioner are cancelled and to take further action.

27. It is these proceedings dt.16.11.2015 of the 1st respondent and the consequential proceedings dt.18.12.2015 of the 3rd respondent and proceedings dt.29.07.2016 of the 4th respondent which are questioned in this present Writ Petition.

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28. The counsel for petitioner contended that once laterite became a major mineral, 'No Objection Certificate' of the Gram Panchayat is not required under Section 242-H of the Andhra Pradesh Panchayat Raj Act, 1994, and therefore, the whole issue of the alleged fictitious Resolution dt.23.07.2009/ 'No Objection Certificate' of the Sarugudu Gram Panchayat was unnecessary and could not have been gone into and permission to grant laterite mining lease cannot be cancelled.

29. He further contended that as a matter of fact in the public hearing held on 17.11.2011 by the Joint Collector, Visakhapatnam and the Andhra Pradesh Pollution Control Board, Patte Raja Rao, the person who was Sarpanch at the time of passing of the said Resolution specifically stated that he welcomed the proposed mining project; that he belonged to the Communist Party of India and that 'No Objection Certificate' from the said Panchayat to the mining activity was given by his Panchayat when he was the Sarpanch. He contended that this statement of the Sarpanch could not have been ignored by the respondents and the impugned orders passed. He stated that petitioner had already obtained Environmental Clearance and Consent For Establishment. According to him, the only thing which remained was entering into agreement by the petitioner with the Director of Mines and Geology and at that juncture the cancellation order was passed illegally and arbitrarily. He pointed out that the petitioner, being a 'Schedule Tribe' person, has been harassed by the respondents for no valid reason, and therefore, prayed that the Writ Petition be allowed.

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Pending events

30. In the Writ Petition, on 14.09.2016, this Court directed the respondents not to create any third-party interest till 19.09.2016, and the said order was continued from time to time.

I.A.No.1 of 2017 (WVMP.No.1002 of 2017 & I.A.No.2 of 2017 (WVMP.No.3756 of 2017)

31. I.A.No.1 of 2017 (WVMP.No.1002 of 2017) is filed by the State of Andhra Pradesh and the Commissioner of Panchayat Raj to vacate the order dt.25.01.2017 passed in WPMP.No.38314 of 2016 in WP.No.30956 of 2016; and I.A.No.2 of 2017 (WVMP.No.3756 of 2017) is filed by the Director of Mines and Geology, Government of Andhra Pradesh to vacate the order dt.08.08.2017 passed in WPMP.No.38314 of 2016 in WP.No.30956 of 2016.

32. The District Collector, Visakhapatnam, who is the 3rd respondent in the Writ Petition, also filed a separate counter- affidavit.

The Stand of the Panchayat Raj Department :

33. In the Counter-affidavit filed by respondent nos.1 and 2 in the Writ Petition, it is stated that a representation was received by the Minister for Panchayat Raj during his tour of the area about the validity of the Resolution dt.23.7.2009; by proceedings dt.17.12.2014, the District Panchayat Officer, Viskhapatnam was asked to conduct a detailed enquiry in relation to tampering and manipulation of papers MSR,J ::10:: wp_30956_2016 of the Gram Panchayat resolutions of Sarugudu Gram Panchayat; that the said official completed enquiry and gave a report to the Commissioner on 05.02.2015 opining that there was no meeting conducted by Gram Panchayat on 23.07.2009 and that the Resolution dt.23.07.2009 relied upon by petitioner was not a genuine one; basing on the said report a recommendation was made to cancel the resolution dt.23.07.2009 which was found in the second set of Registers of the Gram Panchayat; that thereafter the matter was referred to the Government under Section 246 of the Act; that it issued a show-cause notice to the Gram Panchayat on 12.03.2015 as to why the Resolution dt.23.07.2009 should not be cancelled under Section 246(1)(b) of the Act; that no reply was received from the Gram Panchayat; and thereafter, the Government passed the impugned order on 16.11.2015 directing the District Collector to cancel all permissions for laterite leases issued by the Gram Panchayat based on the alleged fictitious resolution dt.23.07.2009 of the Gram Panchayat which was being relied upon by petitioner.

34. It is contended that under Section 242-H of the Act inserted by the Andhra Pradesh Panchayat Raj (Amendment) Act, 1998 recommendation of the Gram Panchayat should be necessary prior to the grant of prospecting lease or mining lease for minor minerals in Schedule Areas; and that the Sarugudu Gram Panchayat is in Scheduled Area, and therefore, the resolution of the Gram Panchayat was necessary.

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The stand of the Industries Department

35. Similar stand is taken by the Director of Mines and Geology. It is also stated by him that he cannot grant a quarry lease to petitioner once 'No Objection' granted by the Revenue Department, i.e., Tahsildar is cancelled after it is found that the resolution dt.23.07.2009, relied upon by the petitioner was found to be fictitious; and that there is no dispute about the petitioner belonging to the Schedule Tribe Community and the District Collector, Visakhapatnam in his proceedings dt.07.02.2013 stated that the Schedule Tribe status of the petitioner was verified through the District Level Scrutiny Committee, and the claim of petitioner that he is a Schedule Tribe is correct.

36. The counter of the District Collector is also on the lines similar to that of respondent nos.1 and 2.

37. The counsel for petitioner as well as the learned Government Pleaders supported the stand of their respective clients.

38. I have noted the contentions of parties.

THE CONSIDERATION BY THE COURT

39. The fact that the petitioner belongs to 'Schedule Tribe' community, though doubted at one point of time by some people who objected to grant of mining lease to him, is no longer in doubt.

Admittedly in the proceedings of the District Collector,
Visakhapatnam in Reference (M)R.Dis.No.1294/2012/C5,
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dt.07.02.2013, he had stated that petitioner was found by the District Level Scrutiny Committee [constituted under the Andhra Pradesh SCs, STs and BCs, Issue of Community, Nativity and Date of Birth Certificate Rules, 1997] to belong to a Schedule Tribe Community.

40. The petitioner did rely upon a resolution dt.23.07.2009 of the Sarugudu Gram Panchayat, allegedly passed in his favour, granting 'No Objection Certificate' for grant of mining lease. On the basis of the said resolution, on 12.10.2010, the Principal Secretary, Mines Department, had issued proceedings granting mining lease to the petitioner for twenty (20) years subject to submission of Consent For Establishment from the Andhra Pradesh Pollution Control Board and Environmental Clearance from Ministry of Environment and Forests and subject to satisfaction of Mineral Concession Rules. On 13.12.2010, the Zonal Director of Mines and Geology issued proceedings approving mining plan for laterite for 121.00 Hectares to the petitioner in the Bhamidika Village. The Tahsildar, Nathavaram Mandal, Visakhapatnam District, had also issued 'No Objection Certificate' on 16.01.2012 to the petitioner.

41. However, after an enquiry allegedly into the genuineness of the Resolution dt.23.07.2009 by the District Panchayat Officer, Visakhapatnam and his report dt.5.2.2015 doubting the holding of any meeting of the Sarugudu Gram Panchayat, the 1st respondent on 16.11.2015 passed orders under Section 246(1)(b) of the Andhra Pradesh Panchayat Raj Act, 1994 cancelling the said resolution;

MSR,J ::13:: wp_30956_2016 basing on it, the District Collector took action on 18.12.2015 and directed the Tahsildar to cancel the No Objection granted by him and Tahsildar, Nathavaram Mandal, on 8.8.2016 cancelled his 'No Objection Certificate'.

42. It is important to note that in the Environmental Public Hearing held on 17.11.2011 at Errakanapalem Village, Nathavaram Mandal, Visakhapatnam District, on the proposal of the petitioner for mining laterite in the presence of the Joint Collector, Visakhapatnam and the Environmental Engineer, of the Andhra Pradesh Pollution Control Board, Sri Patte Raja Rao, Ex-Sarpanch Sarugudu Panchayat, has declared that that NOC from the Gram Panchayat was given when he was a Sarpanch for the mining activity proposed by petitioner. Thus he proved that the Resolution dt.23.07.2009 was in fact passed.

43. This statement was, however, ignored by the District Panchayat Officer in his report dt.05.02.2015 and a conclusion was drawn that the said resolution dt.23.07.2009 was a manipulated and fictitious resolution.

44. When this fact was highlighted by the counsel for petitioner, there was no answer to it from the Government Pleaders. It is also not the case of the respondents that the District Panchayat Officer in the alleged enquiry conducted by him before submitting his report dt.05.02.2015 examined Sri Patte Raja Rao, the then Sarpanch of the Sarugudu Gram Panchayat, or other members of the said Gram Panchayat to verify whether or not on 23.07.2009 there was, in fact, a MSR,J ::14:: wp_30956_2016 'No Objection Certificate' / resolution passed giving 'No Objection Certificate' to the mining activity proposed by the petitioner. No reason is assigned why he did not examine them. Had the District Panchayat Officer done such an enquiry the truth would have come out.

45. Obviously, the very persons who doubted the petitioner's social status were behind the said report dt.05.02.2015 of the District Panchayat Officer.

46. More importantly, it is not disputed that laterite mineral, which was a minor mineral at the time when the petitioner made an application for grant of mining lease, ceased to be a minor mineral from 10.02.2015 after the Central government issued notification under Sec. 3(3) of the Mines and Minerals (Development and Regulation) Act,1957. Only if the mineral in question is a 'minor mineral', Section 242(H) of the Panchayat Raj Act, 1994 would be attracted and prior consent of the Gram Panchayat is required for grant of mining lease for minor minerals in the Schedule Areas under the said provision. This legal position is not disputed by the Government Pleaders.

47. Thus, once laterite mineral ceased to be a minor mineral there was no necessity to obtain 'No Objection Certificate' from the Gram Panchayat at all. Consequently, whether the resolution dt.23.07.2009 of the Gram Panchayat giving 'No Objection Certificate' to the petitioner's mining activity is genuine or fictitious, became irrelevant.

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48. In the instant case, the very show-cause notice issued by the 1st respondent to the Sarugudu Gram Panchayat with regard to cancellation of the Resolution dt.23.07.2009 was on 12.03.2015, after 10.02.2015, i.e., after laterite ceased to be a minor mineral.

49. Without taking into account this fact, the 1st respondent appears to have been initiated action to cancel the said resolution dt.23.07.2009 by issuing a show-cause notice on 12.03.2015 and passed the impugned order on 16.11.2015 directing the District Collector to cancel all consequential orders basing on the resolution dt.23.07.2009 of the Sarugudu Gram Panchayat. In fact, the 1st respondent ought to have dropped all further enquiry into the validity of the resolution dt.23.07.2009 the moment laterite ceased to be a minor mineral on 10.02.2015.

50. In this view of the matter, the Memo No.3141/Pts.III/A1/2015 dt.16.11.2015 passed by the State of Andhra Pradesh (1st respondent herein) and the consequential order in Rc.No.1961/2014 A1, dt.18.12.2015, passed by the District Collector, Visakhapatnam (3rd respondent herein), and the order in Rc.No.285/2016/A dt.29.07.2016 of the Tahsildar, Nathavaram Mandal, Visakhapatnam (4th respondent herein) cannot be sustained, and they are accordingly set aside.

51. Accordingly, the Writ Petition is allowed with costs of Rs.10,000/- to be paid by the 1st respondent within four (04) weeks. It is declared that the 'No Objection Certificate' granted by the MSR,J ::16:: wp_30956_2016 Tahsildar, Nathavaram Mandal, Visakhapatnam District, on 16.01.2012 to the petitioner regarding grant of mining lease to the petitioner for the extent of 121.00 Hectares in Bhamidika Village, Nathavaram Mandal, Visakhapatnam District holds, and the respondents are directed to take all steps necessary for executing mining lease in favour of the petitioner in respect of the said land and execute the same within a period of six (06) weeks from the date of receipt of copy of the order.

52. Consequently, I.A.No.1 of 2017 (WVMP.No.1002 of 2017) filed by the State of Andhra Pradesh and the Commissioner of Panchayat Raj, and I.A.No.2 of 2017 (WVMP.No.3756 of 2017) filed by the Director of Mines and Geology, Government of Andhra Pradesh to vacate the orders dt.25.01.2017 and dt.08.08.2017 passed in WPMP.No.38314 of 2016 in WP.No.30956 of 2016, are dismissed.

53. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

17.08.2018 Ndr/* JUSTICE M.S.RAMACHANDRA RAO Date: