

J. Jaipal Vs. Govt. of A.P. and Others

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Court : Andhra Pradesh

Decided On : Jul-02-2001

Reported in : 2001(5)ALD453

Judge : Goda Raghuram, J.

Acts : Andhra Pradesh Minor Mineral Concession Rules, 1966 - Rules 11, 11(1), 11(2) and 31

Appeal No. : WP Nos. 9473, 9474, 9959 and 9960 of 2001

Appellant : J. Jaipal

Respondent : Govt. of A.P. and Others

Advocate for Def. : Government Pleader for Industries and ;Commerce and Mr. K.V. Bhanuprasad, Adv.

Advocate for Pet/Ap. : Mr. M. Chandrasekhar Reddy and ;Mrs. N. Shoba, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

1. These four writ petitions involve interconnected issued and are thus considered and disposed of by this common judgment.

2. Heard learned Counsel for the petitioners Sri M Chandrasekhar Reddy and Smt. N. Sobha and learned Government Pleader for Industries and Commerce for the respondents.

3. The petitioners have been granted quarry leases which are subsisting, the details of which are as under:

Sl. No. Name WP No. Location and Extent Period of Lease

1. Mohd. Ibrahim Khan WP 9959 of 2001343/1 of Ammenpura (v) Patancheru (M) Medak District 2.000 Hectares

17-3-1992 to 14-3-2014 2. J. Jaipal WP 9473 of 2001343/ of Ammenpura (v) Patancheru (M) Medak District 3.00 Hectares

12-10-1990 to 11-7-2010 3. Miraj Osman Baig WP 9974 of 2001343/1 of Ammenpura (v) Patancheru (M) Medak District 2.00 Hectares

12-10-1990 to 11-10-2012 4. Md. J. Jilani WP 9960 Of 2001327 of Ammenpura (v) Patancheru (M) Medak District 1 .000 Hectares 4-11-1993 to 3-11-2008

4. The quarry leases were granted after grant of certificate of no objection by the concerned Revenue authorities and inspection by the jurisdictional Assistant Director of Mines and Geology.

5. The petitioners have also obtained explosive licences from the Joint Chief Controller of Explosives, Southern Circle, Chennai.

6. In the year 1996 the Assistant Director of Mines and Geology, issued proceedings under Rule 11(2) of the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules') prohibiting quarrying operations by the petitioners. Aggrieved, writ petitions were filed in this Court. The writ petitions were eventually allowed setting aside the order of the Assistant Director of Mines and Geology, however, granting liberty to proceed again in accordance with law after holding an enquiry and after giving opportunity to the lease holders. The petitioners were permitted to continue the quarrying operations till a decision after enquiry is taken.

7. It is stated that after the decision above, the Deputy Director of Mines and Geology and the Assistant Director of Mines and Geology, Medak and other officers inspected the lease areas and submitted a report to the Director of Mines and Geology. It is claimed that this report recorded that the blasting operations in the petitioners lands do not cause any inconvenience or loss to the residents of the neighbouring colonies. Thereafter in the year 1999 the Station House Officer, Ramachandrapuram Police Station is alleged to have orally instructed the petitioners not to conduct any quarrying operations in the leased lands. One of the lessees - petitioner in WP 9474 of 2001 filed Writ Petition No. 15498 of 2000 in this Court for a direction to the Superintendent of Police, Medak and to the SHO, Ramachandrapuram, not to interfere with the quarrying operations including blasting operations being conducted in the leased lands. It is asserted that in the counter-affidavit in the said writ petition it has been stated that the quarry area is situate 3 km. from residential colony. The said writ petition was disposed of by the order dated 11-10-2000 recording the statement of the respondents-Police to the effect that after verification of the oral complaints blasting operations are not being interfered with. In the light of the statement recorded, the writ petition was disposed off as there was no need to pass any further orders in the writ petition.

8. It is alleged further that after failure in his endeavours to stop the quarrying operations and after the above proceedings of this Court, the Superintendent of Police, Medak, sent up a false report to the Director General of Mines Safety, Government of India, requesting cancellation of the quarry leases held by the petitioners in Sy.Nos.343/1 and 327, Ameenpur Village, Medak District. It is also alleged that the Superintendent of Police brought pressure on the Director of Mines and Geology to cancel the quarry leases.

9. The Director of Mines and Geology issued a show-cause notice dated 22-11-2000 to the petitioners to show-cause why the lease areas given to them should not be declared as prohibitory zone for quarrying. These notices were purportedly issued under Rule 11(2)(c) of the Rules.

10. Aggrieved by the above show-cause notice, the petitioners filed WP No.23076 of 2000. This writ petition was disposed of at the stage of admission with a

direction to the petitioners to offer their explanations to the show-cause notice, which would be considered by the authorities. Till then the petitioners were permitted to carry on the quarrying operations.

11. The petitioners submitted their reply/objections to the show-cause notices stating that they have not caused any damage to the properties of the residents of the neighbouring colonies, that they have invested substantial amount in setting up crushers and laying approach roads and contended that the quarrying areas are situate 3 km. away from the residential colonies and that in the totality of circumstances, the quarry operations do not impinge on public interest as is warranted for invocation of powers under Rule 11(2) of the rules.

12. By orders dated 30-12-2000 the Director of Mines and Geology considered the objections of the petitioners, submitted to the show-cause notice dated 22-11-2000 and concluded that the quarrying activity is causing damage to the properties of the residents residing in the neighbouring colonies. The order recorded that the safety of the people living nearby preponderates over any individual inconvenience caused to the lease holders and the petitioners should shift their activity to distant places which process could be facilitated by the department by re-locating their quarry lands. In conclusion, in exercise of powers under Rule 11(2)(c) of the rules, the Director of Mines and Geology prohibited quarrying operations in the leased areas of the petitioners.

13. Aggrieved by the orders dated 30-12-2000 prohibiting quarrying operations, the petitioners instituted Writ Petition Nos.921, 941, 1035 and 1041 of 2001. Interim orders were initially granted suspending/ staying the operation of the impugned order. Eventually by a common judgment dated 5-3-2001 the writ petitions were disposed of directing the State Government to dispose of the revision petitions filed by the petitioners against the orders of the Director of Mines and Geology within the period stipulated in the judgment. This Court directed that the interim suspension/ stay granted by this Court while admitting the writ petitions will continue until disposal of the revision petitions by the State Government.

14. By the order dated 27-4-2001 in Memo No.1615/M.II(1)/2001-3 the State Government dismissed the revision applications filed by the petitioners. This order

recorded that the Andhra Pradesh Pollution Control Board submitted a report that it is initiating action under the provisions of Air Act against the petitioners, that the obtaining of an explosive licence is by itself not a ground for allowing the quarrying operations to continue, that the available records make it clear that the quarrying activity is causing damage to the life and property of the inhabitants residing in the neighbouring colonies, that the crushers of the petitioners are located very proximate to the colonies, which is endangering human life, that the safety of the people living nearby is undermined by the huge blasting operations being resorted to by the leaseholders and that the associations of the surrounding colonies have represented to the Government for stoppage of quarrying/blasting operations. The petitioners challenge the orders of the Director of Mines and Geology dated 30-12-2000 as confirmed by the revisional order of the State Government dated 27-4-2001 in the present writ petitions.

15. It is broadly contended on behalf of the petitioners as under:

(A) As per clause (5) of Part III of Form No.1 of Mineral Concession Rules, 1960, mining operations are prohibited within a distance of 50 mts, from certain specific public works except with the previous written permission of a designated authority. These guidelines in the Mineral Concession Rules are also being followed in respect of minor minerals by the State Government. The counter-affidavit states at Para-8 that the Joint survey of Mines, Revenue and Survey and Land Records Departments found the distance between the crushers and the colonies to be around 1/2 km. Having regard to the considerable distance, even according to the counter-affidavit, there is no necessity to issue the prohibitory orders under Rule 11 of the rules, particularly when the said orders lead to economic ruination of the petitioners without any countervailing public interest element involved.

(B) Blasting operations that have necessarily to be conducted by the petitioners for quarrying the metal are not of such magnitude as would endanger the life or property of the inhabitants of the neighbouring colonies.

(C) The very fact that an explosive licence has been granted and that too after necessary inspection should belie the assertion of the respondents that the operations of the petitioners are injurious to public interest or to the life and

property of the inhabitants of the neighbouring colonies.

(D) The power under Rule 11(2) of the rules is not available for prohibiting the quarry operations while the lease is subsisting and has not been cancelled. Rule 11(1)(a) empowers the cancellation of the lease by the State Government and Rule 31(xviii) empowers the Deputy Director concerned to determine the lease in consultation with the Government if it is considered necessary by him to do in the public interest and after giving two calendar months notice in writing. Without determining the leases either in exercise of powers under Rule 11(1) or Rule 31(xviii) of the rules, the exercise of power under Rule 11(2) prohibiting the quarrying operations constitutes an arbitrary exercise of power.

(E) Similar questions arising in public interest litigation filed in respect of stone quarries in and around Ranga Reddy District came to be considered by a Division Bench of this Court, which called for a report from the Government. The Government constituted a committee of experts to submit a report to this Court. The Committee of experts in its report came to the conclusion that the distance of 1 km. between the site of the quarry lease and the residential locality would be a safe distance -vide A. Citizen v. District Collector, Ranga Reddy District, : 1998(4)ALD389 . As against the said decision the matter was carried to the Supreme Court by the affected quarry owners. The Supreme Court while staying the operation of the judgment of the Division Bench of this Court, directed the petitioner not to carry on any mining and stone crushing operations within the distance of one kilometre from the lake/service reservoir and five hundred meters from human habitation.

16. In view of the fact that the admitted position even according to the counter-affidavit is that even the crushers of the petitioners are 1/2 km. away from the existing human habitations/colonies, in view of the interim orders of the Supreme Court, the decision of the Director of Mines and Geology as confirmed by the State Government in the revisions, is arbitrary.

17. Rule 11 of the rules reads as under:

'11. Power of the Government and the Director:--

(1) Power of 'Government:--Government reserves the right-

(a) to cancel the quarry lease granted and executed under these rules, if it is considered necessary to do so either due to change in the policy or in the public interest by giving previous notice;

(b) to grant the leases for any minor minerals by duly exempting from the priorities fixed under different , provisions under these rules on nomination or otherwise subject to certain specified conditions for any category of land in favour of any section of the society;

(c) to waive the collection of seigniorage fee and dead rent at their discretion.

(2) The Director shall have the powers:--

(a) to prohibit quarrying operations in part or in the whole of the area under lease or free-hold areas for the reasons recorded in consultation with the competent authority;

(b) to impose any special conditions in quarry leases granted under these rules;

(c) to close any quarry or prohibit quarrying operations or reserve the land for being worked by any particular department of the Government or a local authority and to regulate quarrying operations according to the law in force;

(d) to regulate the quarrying operations by issuing temporary permits for any minor mineral during the transmission period whenever there is a proposal to change the policy by the Government for the grant of the leases'.

18. As is apparent, on a true and fair construction of the provisions of Rule 11(2) the Director of Mines and Geology is empowered to prohibit quarrying operations in part or in the whole of an area under lease or in free-hold areas, to close any quarry or prohibit quarrying operations or reserve the land for being worked by any particular Department of the Government or Local Authority and to reject quarrying operations according to the law in force.

19. As the power inhering in the Director of Mines and Geology is a statutory power, it necessarily follows that it is to be exercised in public interest and that it is a power coupled with a duty obligating its exercise when so warranted by the circumstances [Julius, v. Lord Bishop of Oxford, 1880) 5 AC 214].

20. The leased areas of the petitioners are asserted to be proximal to existing habitations and housing colonies. The explanations of the petitioners which set out their personal circumstances including heavy investments made by them and that their activities pose no hazard to the colonies have been considered by the competent authority - the Director of Mines and Geology. On a rational consideration of the material on record including the report of the A.P. Pollution Control Board, the representations of the neighbouring colonies and the nature of the activity that the petitioners carry on as part of their quarry operations, the statutory authority - the Director of Mines and Geology came to the conclusion that the present location of the petitioners' quarry and the operations therein including blasting operations are inconsistent with the safety of the persons and properties of the inhabitants of the neighbouring colonies. This is a satisfaction that is based on the material available on record and a rational analysis thereof by the Director. What distance of quarrying from human habitations is conducive to the well being of the people, is a value judgment predominantly within the province of the Director of Mines and Geology. In exercise of such available power and on consideration of the relevant circumstances if the Director has concluded that the quarrying operations of the petitioners should be prohibited in exercise of the available power under Rule 11 of the rules, it is not permissible for this Court to sit in appeal over such decision on any assumptive or speculative dialective that the distance of 1/2 km from the colonies is not detrimental to the safety of the residents of the colonies. Reappreciation of the data or of the facts is not within judicially manageable standards.

21. Having regard to the fact that the petitioners have been informed by the orders of the Director dated 30-12-2000 that the petitioners could shift their operations to a distant place, which process could be facilitated by the Department by relocating their quarries, this Court is of the considered view that the petitioners suffer no substantial prejudice, at any rate a degree of prejudice which outweighs the larger

interest of the inhabitants of the neighbouring colonies. No allegations of malice in fact have been urged or demonstrated against the Director of Mines and Geology.

22. The interim order of the Supreme Court in a case arising out of a Division Bench judgment (*supra*) permitting the petitioners therein to continue quarrying operations within 500 mts., from human habitations cannot be construed as laying down any general principle that quarrying operations within 500 mts., of human habitations is either permissible or poses no threat to lives and property of the inhabitants of such colonies in all cases and situations. The order of the Honourable Supreme Court is an interlocutory direction made in the circumstances and exigencies of the particular case and on the facts and circumstances urged therein.

23. In the analysis above the rejection of the revisions instituted by the petitioners by the State Government is not susceptible to interference or invalidation by this Court. There is no error of discretion by the State Government in rejecting the revisions, warranting interference. The writ petitions are accordingly dismissed.

24. The Director of Mines and Geology shall, if the petitioners make applications for re-locating their quarries, consider the same expeditiously and in any case within six weeks from the date of such applications.

25. No order as to costs.