

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.21884 of 2021

ORDER :

The petitioner Cooperative Society prays for a writ of mandamus declaring the certificate No.660/2021/SA dated 09.09.2021 issued by 3rd respondent in favour of 8th respondent allotting work in Sand reaches of Abbirajupalem Village, Elamanchili Mandal, West Godavari District while the letter dated 27.08.2021 of the 7th respondent is in force, is bad, arbitrary and contrary to the provisions of the A.P. Mines and Minerals Concession Rules, 1966 (for short, 'the APMMC Rules') and for such other orders.

2. The petitioner's case is thus:

(a) Petitioner is a Society consisting of 49 members who are all depending on sand quarrying operations as well as fishing to eke out their livelihood. Since inception the members of the petitioner society are doing sand quarrying operations by obtaining permission from the 2nd respondent on payment of fixed rents. They are daily wage labourers and skilled workers in the sand quarrying operations.

(b) The State Government upgraded the existing sand mining policy and made amendments to APMMC Rules, 1966. Pursuant to the same, the 6th respondent is appointed to carry out the sand related activities as a new agency. In that view, the 2nd respondent ceased to be the agent and has any role in sand quarrying operations.

(c) While so, the 3rd respondent addressed letter in Rc.No.417/2021/A dated 09.07.2021 to the 5th respondent herein and on the recommendations

of 5th respondent the M.R.I. and V.R.O. of Abbirajupalem Village certified that petitioner Society was registered on 01.03.1999 and the members of the society are doing excavation of the sand and doing coolie work to eke out their livelihood. Thereafter, the petitioner society was granted No Objection in Abbirajupalem and Gangadupalem Villages for production, loading and dispatch of sand at site. Thereafter, the petitioner Society made a representation to the 4th respondent on 23.08.2021 requesting to recommend for permission to carry out sand quarrying operations in the above said two sand reaches. The 7th respondent who is the sub-lessee of 6th respondent also addressed a letter dated 27.08.2021 to 3rd respondent expressing No Objection for the petitioner Society to conduct production, loading and dispatch of sand in Abbirajupalem and Gangadupalem Villages. Thus, the petitioner Society is entitled to carry out sand quarrying operations in the above villages.

(d) While so, the 3rd respondent issued a certificate vide letter dated 09.09.2021 to the effect that the 8th respondent is a society with 200 members who are daily wage labourers and they are skilled workers in the sand transportation in the area and hence, there was no objection to allot labour work in sand reaches. The petitioner Society came to know that the Deputy Registrar of Cooperative Societies, Bhimavaram issued certificate of registration dated 07.06.2019 stating that Gangaputrulu Sand and Boatsmen Labour Contract Co-operative Society Limited i.e., 8th respondent is a registered labour contract cooperative society under Section 6 of the A.P. Cooperative Societies Act, 1964. It is relevant to state that when once a

society is in existence, no second society is to be registered under the A.P. Cooperative Societies Act as two societies shall not co-exist for the same purpose in the same area of operation. While the petitioner society has been in existence since 1999, the 8th respondent Society cannot operate. The Deputy Registrar of Cooperative Societies, Bhimavaram has no power to register the said society for Abhirajupalem Village where the petitioner Society is in existence. Now the 8th respondent is seeking an order from 6th respondent through 7th respondent to carry out sand quarrying operations in Abhirajupalem Village Sand Reach. The 8th respondent is causing hindrance to the members of the petitioner Society in Abhirajupalem Village from conducting sand quarrying operations. Thereby the petitioner society members are facing lot of problems. Aggrieved by their action, the petitioner society filed the instant writ petition challenging the certificate vide No.660/2021/SA dated 09.09.2021 issued by the 3rd respondent as bad and arbitrary and contrary to their own order dated 27.08.2021.

3. The 3rd respondent filed counter contending thus:

(a) The Government of A.P. introduced amendment to the APMMC Rules vide G.O.Ms.No.25 dated 16.04.2021 whereby it has introduced a system of granting lease to successful bidder for excavation and sale of sand. In that process, the 6th respondent was selected as agent to carry the sand operations. As such in the G.O.Ms.No.25 there was no role or part of the Tahsildars in the sand work allotment. It is now completely a private affair.

(b) While so, the 5th respondent addressed letter dated 26.06.2021 to respondent No.3 stating that the petitioner society is registered by the Fisheries Department and as per the byelaws, Gangadupalem, Abbirajupalem, Matlapalem and Irapakurru Villages come under the area of operation of the above said Society and also that there was no other fisherman cooperative societies registered by the Fisheries Department and requested the 3rd respondent to propose and recommend petitioner Society for digging the watered sand from the river Abbirajupalem and Gangadupalem sand reaches. On the basis of said request, a letter was addressed to 5th respondent wherein a report has been given about the petitioner society. When the matter thus pending, all of a sudden on 23.08.2021, a letter has been received by the 3rd respondent from the 7th respondent stating that 6th respondent has received orders from Director of Mines and it has commenced sand operations through its sub-contractor i.e., 7th respondent and they have no objection to give sand operations in Abbirajupalem Sand Reach to 8th respondent society and requested the 3rd respondent to take necessary action according to the No Objection given by 7th respondent. The 7th respondent has not consulted the 3rd respondent before issuing NOC in favour of 8th respondent, but only informed after finalizing the contract.

(c) Thus, on 27.08.2021, two letters have been received from 7th respondent stating no objection to give sand operations in Abbirajupalem and Gangadupalem to the petitioner and requested to take necessary action.

The 7th respondent did not consult the 3rd respondent before issuing NOC and they informed only after finalizing the contract on 27.08.2021.

(d) While so, on 31.08.2021, 8th respondent filed a representation requesting to give sand operations of 6th respondent to their Society. As per the above request of 7th and 8th respondents, a certificate has been issued from the office of 3rd respondent to 8th respondent society. Aggrieved by the said letter, the petitioner society filed the present writ petition. It is reiterated that as per amended APMMC Rules vide G.O.Ms.No.25, the Tahsildar has no role in the sand work allotment as they do not come under his jurisdiction. He thus prayed to dismiss the writ petition.

4. The 8th respondent filed counter contending thus:

(a) This writ petition is not maintainable since there is no violation of any rules in issuing letter dated 23.08.2021 in favour of the 8th respondent.

(b) The 8th respondent society was registered as Labour Contract Cooperative Society under Section-6 of A.P. Cooperative Societies Act, 1964 on 07.06.2019 which has 200 members. The said society was registered exclusively for excavation of sand apart from doing fishing activities. Subsequent to its registration, the 8th respondent was assigned the excavation of the sand from the de-siltation points in West Godavari District and entered into an agreement with the 2nd respondent and has been executing the same work even till date. Subsequent to the 7th respondent was appointed as agent under the new policy of the Government, the 8th

respondent was engaged for the same purpose as they were already doing the same work earlier through the 2nd respondent.

(c) The 7th respondent was appointed as agent and thereafter the 8th respondent submitted application and accordingly no objection dated 23.08.2021 was issued for Abbirajupalem reach for production, loading and dispatch of the sand. Accordingly, the 8th respondent was permitted by the 3rd respondent by proceedings dated 09.09.2021. There is no irregularity, illegality in issuing certificate dt: 09.09.2021 and hence the writ petition may be dismissed. There are no exclusive rights for the petitioner over Abbirajupalem sand reach to question the certificate dated 09.09.2021 issued in favour of the 8th respondent.

(d) The petitioner cannot claim any privilege of assigning the quarry on the ground that their society was registered much earlier to the 8th respondent society.

(e) The allegation of the petitioner that the Deputy Registrar of Cooperative Societies, Bhimavaram has no power to register the 8th respondent society is false. There is no law restraining the registration of another society while a society was already registered and in existence. For that matter it is to be stated that there is another society in existence with name "Mahatma Gandhi Harijana Field Labour Cooperative Society" for the same purpose and it has filed W.P.No.4416 of 2018 questioning the allocation of the rights in similar circumstances and the same was dismissed by this Court by its order dated 05.02.2021. Therefore, the petitioner cannot claim any exclusive rights over the sand reaches including Abbirajupalem

reach where the 8th respondent was assigned production, loading, dispatch and transportation of sand in that reach.

5. Learned Assistant Government Pleader for Mines & Geology filed written instructions and submitted about the substance of the written instructions as follows:

(a) The Government has introduced the new Sand Mining Policy 2019 vide G.O.Ms.No.71, Industries, Infrastructure, Investment and Commerce (Mines-II) Department, dated 04.09.2019 and issued guidelines for sand excavation including de-siltation of the sand. Subsequently, vide G.O.Ms.No.25, Industries & Commerce (M.III) Department, dated 16.04.2021, the Government amended the Rule 9(B) of APMDC Rules, 1966 for up-gradation of the sand policy. As per Rule 9(B)(2) as amended in G.O.Ms.No.71 de-siltation of dams, reservoirs, barrages, large tanks will be taken up directly by the Irrigation Department or by allotting to APMDC Ltd., / 2nd respondent. Subsequently the Government issued orders upgrading the existing sand policy, 2019 vide G.O.Ms.No.78, Industries & Commerce (M.III) Department, dated 12.11.2020 and as per instructions 6(viii), it was laid that the appointed agency may explore to employ Boats man Society for sand excavation from specific notified reaches.

(b) While so, the Director of Mines & Geology issued proceedings No.2794/Sand-P2/2021, dt: 12.05.2021 issued work order in favour of the 6th respondent to commence the operations from 12.05.2021 in specific areas

of package-2 covering West Godavari, Krishna, Guntur and Prakasam Districts and all notified reaches during the tenure of lease period as per the terms and conditions. In view of the change in the sand policy, as stated supra the Mining Department has nothing to do with the sand operations in Abbirajupalem and Gangadupalem sand reaches. The engagement of Boatsmen Societies lies with the 6th respondent after receiving feasibility report from the Executive Engineer, Godavari Head Works, Davaleswaram.

6. Heard Smt. Vidyavathi, learned counsel for the petitioner and learned Assistant Government Pleader for Mines and Geology representing respondents 1 and 4, learned Standing Counsel for respondent 2, learned Government Pleader for Fisheries representing respondent 5, learned Government Pleader for Revenue representing respondent 3 and Sri K. B. Ramanna Dora, learned counsel for respondent 8.

7. Counsels of either side reiterated their pleadings in their respective arguments. While it is the contention of the petitioner's society that it was registered under A.P. Cooperative Societies Act, 1964 earlier than the 8th respondent society and that the subject villages i.e., Abbirajupalem and Gangadupalem and some other villages having sand reaches fall within their jurisdiction and further, as per the representation of the petitioner society dt: 23.08.2021, the 7th respondent who is the sub-lessee of the 6th respondent addressed a letter dt: 27.08.2021 to 3rd respondent expressing no objection for the petitioner society to conduct operations of production, loading, and

dispatch of sand in Abbirajupalem and Gangadupalem villages and as such the petitioner society has exclusive rights to conduct sand reach operations in Abbirajupalem and Gangadupalem villages and the 8th respondent who is said to have got a certificate dt: 09.09.2021 cannot take over the Abbirajupalem reach and cause obstruction to the petitioner from doing sand operations, per contra, the contention of the 8th respondent is that the 7th respondent addressed letter dt: 23.08.2021 to the Mandal Revenue Officer, Elamanchili Mandal, West Godavari District wherein it has expressed no objection for 8th respondent society to conduct operations of production, loading and dispatch of the sand in Abbirajupalem and Gangadupalem sand reach and thereafter the sand certificate was issued on 09.09.2021 by the 3rd respondent and the petitioner cannot claim any exclusive right or privilege over Abbirajupalem sand reach particularly when the sub-contractor issued no objection certificate in favour of the 8th respondent.

8. The point for consideration is whether there are merits in the writ petition to allow?

9. **POINT:** As can be seen from the instructions filed by the learned Assistant Government Pleader for Mines & Geology, the Government have introduced new sand Mining Policy, 2019 vide G.O.Ms.No.71, Industries, Infrastructure, Investment and Commerce (Mines-II) Department, dated 04.09.2019 and issued guidelines for sand excavation. Subsequently, vide G.O.Ms.No.25. Industries & Commerce (MIII), dt: 16.04.2021, the

Government amended the Rule 9(B) of APMMC Rules, 1966 for up-gradation of the sand policy. As per the changed sand policy, it appears the 6th respondent was appointed as an agent of the Government for conducting sand operations in West Godavari, Krishna, Guntur and Prakasam areas. In that view neither the 2nd respondent nor the Revenue and Mines & Geology Departments have any substantial control over the sand reach. This fact is evident from the counter and instructions produced by the Government Pleaders.

10. Be that it may, both petitioner society as well as 8th respondent are two societies registered under A.P. Cooperative Societies Act, 1964. The members of those two societies are primarily engaged in sand production, loading, transportation at the reaches. While so, as per letter dated: 27.08.2021 the 7th respondent expressed no objection for petitioner society to operate the sand reaches of Abbirajupalem and Gangadupalem. However, in the letter dated 23.08.2021 the 7th respondent expressed no objection for 8th respondent to operate in Abbirajupalem sand reach. The 6th and 7th respondents have not appeared and filed any counter despite serving notice. So this Court has no advantage of knowing the stand of 6th and 7th respondents with regard to allotment of sand reaches, particularly Abbirajupalem and Gangadupalem between the petitioner and 8th respondent society. In this case petitioner claims exclusive right and privilege over Abbirajupalem and Gangadupalem sand reaches.

11. In my considered view and as rightly argued by the 8th respondent, the petitioner cannot claim any exclusive right or privilege in respect of Abbirajupalem sand reach over the 8th respondent in view of the fact that the 7th respondent has issued letter of no objection in favour of both the societies. Though it is argued on behalf of the petitioner that it is the earliest society and that when once a particular society is registered and within its jurisdictional operation certain reaches are provided, no other society should be registered in respect of the same jurisdictional reaches, no such statutory provisions are placed before this Court to buttress its argument. On the other hand, a perusal of the order dated 05.02.2021 in W.P.No.4416 of 2018 shows that a similar society by name “The Abbirajupalem Mahatma Gandhi Harijana Field Labour Cooperative Society Limited” was registered. The said society filed the W.P. questioning the allocation of the rights in similar circumstances and the said W.P. was dismissed noting that due to change in the sand policy. In that view, the petitioner society cannot claim any exclusive privilege over a particular reach.

12. Therefore, I find no merits in the contentions of the petitioner and accordingly the writ petition is dismissed. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

08.03.2022
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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P No.21884 of 2021

08th March, 2022

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