

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.19694 of 2016

ORDER:

Heard Sri Vedula Venkataramana, learned Senior Counsel for the petitioner, learned Government Pleader for Industries, appearing for respondent Nos.1, 2 and 5 and the learned Government Pleader for Revenue, appearing for respondent Nos.3, 4 and 6.

2. Petitioner applied for NOC in terms of G.O.Ms.No.4, Revenue (Ass.I) Department dt.19-01-2015 for the purpose of obtaining mining lease of quartz and feldspar in an extent of 14.5 hectares in Sy. No.196/1 (P) of Chettikistampally village, Hanwada Mandal, Mahabubnagar District to the 1st respondent. The 1st respondent acknowledged receipt of it on 26-03-2016. The 1st respondent then communicated it to 3rd respondent by letter dt.26-03-2016 and requested him to take action for grant of NOC so that application for mining lease can be processed in accordance with law. The 3rd respondent acknowledged receipt of the petitioner's application on 02-04-2016.

3. Alleging that 3rd respondent had not passed any orders, the petitioner filed this Writ Petition placing reliance on G.O.Ms.No.4, Revenue (Ass.I) Department dt.19-01-2015, wherein 6th respondent had directed that

issuance of NOC by revenue authorities in respect of licences for mining leases and quarry leases for government lands shall be dealt with by the revenue officials within 30 days from the date of receipt of the letter from the Assistant Director or Deputy Director of Mines and Geology and approval is deemed to have been sanctioned, if no action is taken in 30 days. The petitioner therefore prays that 1st respondent has to be directed to consider grant of mining lease to the petitioner in respect of the subject land without waiting NOC from the 3rd respondent.

4. The 1st respondent filed a counter affidavit dt.27-06-2016 stating *inter alia* that as regards the petitioner's application, no NOC from the 1st respondent was received. He also took the plea that there were other applications prior to the application of the petitioner and the petitioner's application would be considered, if the prior applicants withdraw their applications.

5. The 3rd respondent however filed a counter alleging that she had considered the petitioner's application on 29-04-2016 itself by addressing a letter in proceedings in Lr.No.B/391/2016 to the 1st respondent. She also stated that this was despatched on 05-07-2016 to the 1st respondent.

6. Learned counsel for the petitioner contends

that as per G.O.Ms.No.4, Revenue (Ass.I) Department dt.19-01-2015, since there is no communication of the decision of the 3rd respondent to the 1st respondent within the mandatory period of 30 days from the date of receipt of an application of the petitioner from the 1st respondent, the petitioner is entitled for grant of mining lease without waiting for NOC from the 3rd respondent and approval of the 3rd respondent is deemed to have been sanctioned since no action was taken in 30 days by the 3rd respondent.

7. Learned Government Pleader for Revenue appearing for respondent Nos.3, 4 and 6 contends that action was already taken on 29-04-2016 itself and therefore, the petitioner is not entitled to invoke the deeming provision in G.O.Ms.No.4, Revenue (Ass.I) Department dt.19-01-2015. He contends that there is a delay in communicating the decision of the 3rd respondent to 1st respondent, but the communication of the decision to the 1st respondent is not relevant and only action which is contemplated in the G.O. is whether the 3rd respondent has granted approval or disapproval within a period of 30 days.

8. Learned counsel for the petitioner however refuted the said contention and states that the order dt.29-04-2016, allegedly passed by the 3rd respondent (a copy

of which is filed along with the counter affidavit of the 1st respondent), bears the stamp “dispatched” and the date 30-04-2016 in handwriting on it, but the despatch register produced indicates that the despatch is only on 05-07-2016. Therefore, there is every possibility of the order being passed beyond the period of 30 days and ante-dated so as to deny benefit of deeming provision in G.O.Ms.No.4 dt.19-01-2015 to petitioner.

9. A look at the copies of the despatch register filed along with counter affidavit of the 3rd respondent indicates that in most cases within a reasonable time of a proceeding being issued by the office of the 3rd respondent (maximum two weeks), the said orders or proceedings were being despatched. It is only in the case of the communication dt.29-04-2016 of the 3rd respondent to the 1st respondent, the despatch was made on 05-07-2016, more than two months later. No explanation is offered by the Government Pleader for Revenue as to why order dt.29-04-2016 why no dispatch was made till 05-07-2016.

10. Therefore, there is a strong suspicion that the order dt.29-04-2016 was possibly passed by 3rd respondent not on the date which it bears, probably later, after the expiry of the 30 days period. Similar view was taken in **State of**

Andhra Pradesh Vs. M.Rama Kistaiah & Co. ^[1]. In the meantime, once the 30 days period expires as per G.O.Ms.No.4, a right accrued to the petitioner that the NOC for mining lease is deemed to have been sanctioned, if no action is taken in 30 days.

11. I am also of the opinion that the word 'action' used in the said G.O. has to be construed as not just taking of a decision by 3rd respondent but also communication of the said decision by the 3rd respondent to the 1st respondent, since that is the scheme for grant of mining leases in G.O.Ms.No.4.

12. Assuming for the sake of argument without conceding that the 3rd respondent did pass the order on 29-04-2016, till it is put in the process of transmission to the 1st respondent, it has no effect and since admittedly it was despatched only after the expiry of two months from the date on which it is allegedly passed, it is not open to the 3rd respondent to contend that there is no deemed approval.

13. No doubt certain reasons have been given in the proceedings dt.29-04-2016 for refusing to grant NOC.

The main reason appears to be that it may cause disturbance to peace and tranquility. It is the duty of the State to ensure peace and tranquility and that cannot be a ground to refuse the application for grant of mining lease.

14. Therefore, the Writ Petition is allowed and the 1st respondent is directed to consider grant of mining lease to the petitioner in respect of quartz and feldspar over the subject land treating that NOC from the Revenue Department is deemed to have been sanctioned in terms of G.O.Ms.No.4, Revenue (Ass.I) Department dt.19-01-2015. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-07-2016

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[\[1\]](#) (1994) 93 STC 406