IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 16413 OF 2018 (GM-MM-S)

DATED:04-11-2019

M/S. JSW STEEL LIMITED, BENGALURU – 560 001. VS. THE GOVERNMENT OF KARNATAKA, BENGALURU – 560 001 AND OTHERS

ORDER

CHIEF JUSTICE

We have heard the submissions of the learned counsel appearing for the petitioner on 30th October 2019. As a request was made by her for grant of time, we did not dispose of the petition and adjourned the petition till today.

2. The learned counsel appearing for the petitioner has sought permission to make further submissions today which we have allowed. Accordingly, we have also heard the learned Additional Government Advocate for the State.

FACTS:

3. The petitioner claims that it is a largest integrated steel plant in the country. It appears that the petitioner applied for allotment of additional land for the benefit of the said project. On the basis of the order dated 11th March 2011 passed by the State Government, the Karnataka Industrial Area Development

Board (in short 'the said Board') allotted land measuring 629.92 acres for creation of impounding reservoir as a single unit project. A letter dated 07th April 2015 addressed by the said Board provided that a lease will be granted for a period of 99 years subject to the conditions stated in the letter. On the basis of the said allotment, the lease was executed by the said Board on 10th April 2015 in favour of the petitioner in respect of area of 629.92 acres for a period of 99 years.

4. Thereafter, there was a correspondence made by petitioner by addressing letters to various authorities. In the said letters, the petitioner pointed out that the work of construction of water reservoir will be purely of earthen embarkment. The request made by the petitioner was for permitting excavation and re-use of soil for construction of earthen dyke on the said area of 629.29 acres. The Deputy Commissioner of the concerned district, by a communication dated 29th November 2019, requested the Secretary to the Government to grant permission for utilization of minor mineral being excavated during the execution of work of water reservoir on payment of royalty. On 12th April 2017, the Secretary to the Government addressed a letter to the Director of Mines and Geology Department granting permission to use minor minerals excavated during the construction in the land which is acquiredthrough the said Board.

5. A work order was issued on 04th October 2017 by the Government of Karnataka granting permission for use of Mines

and other minor minerals excavated through the use of water reservoir subject to conditions incorporated in the said work order. On 24th May 2017, the petitioner paid a sum of Rs.4,00,00,000/- by cheque to the Deputy Director of the Department of Mines and Geology by way of advance payment of royalty charges for use of minor minerals for construction of artificial water reservoir.

6. The challenge in the writ petition as originally filed was to the condition No.1 in work order dated 04th October 2017 (Annexure-C). The second prayer in the alternative was a declaration that Rule 3A and Rule 36 of the Karnataka Minor Minerals Concession Rules, 1994 (for short 'the said rules') do not empower the respondents to levy royalty on minerals excavated for consumption. Later on, an application for amendment being I.A.No.2/2019 was filed seeking amendment for addition of certain paragraphs and adding grounds and for deleting the first prayer where challenge was incorporated to the first condition in the aforesaid work order. The same was allowed. A prayer was added by way of amendment claiming a declaration that the collection of royalty by the respondents on minerals excavated in the land which are used for construction of artificial tank is without authority of law.

SUBMISSIONS:

7. On the earlier date, the submission of the learned counsel appearing for the appellant was that Rule-3A of the

said Rules which grants exemption from obtaining quarrying lease or licence and from provisions of sub-rule 1-A of Rule 8 of the said Rules would squarely apply. It was urged that Rule 3A which applies for digging of wells for water will apply as digging for construction of tank will amount to construction of a well. Today, a submission is made that Clause A of Section 3A would apply as the minor mineral excavated from the area of 629.92 acres is being used for laying the foundation of the water reservoir and therefore, it will amount to digging of earth for foundation of a building.

8. Our attention is invited to the communication dated 12th April 2017 (Annexure-G) addressed by the Secretary of Mines and Geology which specifically directs that the work should be treated as the one for foundation work of artificial water reservoir construction as per Rule 3A of said Rules and therefore, even the State Government has accepted that the exemption provided under Rule 3A of the said Rules is applicable for the work.

9. The second limb of argument is based on a decision of the Apex Court in the case of the PROMOTERS AND BUILDERS ASSOCIATION OF PUNE v/s. THE STATE OF MAHARASHTRA AND ORS.[1] which deals with Section 48(7) of the Maharashtra Revenue Code, 1966 (for short 'the said code'). The submission is that as the minor minerals excavated from the land is used on the same land for laying the foundation of the reservoir, firstly, Rule 3A will be attracted and

secondly, in any event, royalty will not be payable in accordance with Rule 36. Reliance is also placed on second proviso to Rule 3A by contending that only if minor minerals excavated are sold to a third party, the question of payment of royalty to the State Government will arise. Another submission is that royalty is a tax as held by the Apex Court in INDIA CEMENT LTD. AND OTHERS v/s. STATE OF TAMIL NADU AND OTHERS[2] and therefore, itcannot be collected illegally.

10. The submission is that as Rule 36 can be invoked only in a case where licence or quarrying lease is granted, the demand of royalty is completely illegal and deserves to be set aside. The other submission is that permission has been granted to construct a reservoir so that the petitioner can generate its own water resource without affecting water supply to the citizens. The submission is that petitioner has paid substantial amounts to the State Government. It is, therefore, submitted that payment of royalty is illegal and deserves to be set aside.

11. The learned Additional Government Advocate supported the impugned payment of royalty by pointing out several documents on record.

CONSIDERATION OF SUBMISSIONS:

12. We have given careful consideration to the submissions. As prayer Clause 1 has been deleted, the only

prayer for consideration is the second prayer which seeks a declaration that neither Rule 3A nor Rule 36 of the said Rules empower the State Government to levy royalty on the minerals excavated for self-consumption. The exemption claimed by the petitioner is under Rule 3A of the said rules of 1994. It is, therefore, necessary to extract Rules 3 and 3A of the said Rules of 1994, which read thus:

> 3. Quarrying to be under quarrying lease or quarrying Licence. – (1) No person shall undertake any quarrying operation in respect of any minor mineral in any land except under or in accordance with the terms and conditions of a quarrying lease granted under these rules.
>
> (2). No quarrying lease or shall be granted otherwise than in accordance with these rules.
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> Exemption of certain rules in certain cases: - The following activities are exempted from obtaining Quarrying lease or license and from provisions of sub-rule (1-A) of Rule 8 and Chapter II-A, namely.-
>
> (a) the digging of wells for water and digging of earth for foundation of building and disposal of the minor mineral extracted thereof;and
>
> (b) removal of minor mineral except sand from the agricultural field for bonafide use and /or for betterment of the agricultural land by the occupant himself subject to certification by the Agriculture Department to that effect and subject to the condition that such activity shall not render

the land less fit for cultivation than before and also subject to the condition that the mineral is removed in a manner that does not pose danger to the neighbouring areas:

Provided that in case of clauses (a) and (b) above prior Working Permission in writing shall be obtained from the jurisdictional Deputy Director or Senior Geologist before commencement of extraction and that the removal of minor mineral shall be done within a period of twelve months of the date of grant of permission by the jurisdictional Deputy Director or Senior Geologist.

Provided further that in case of clause (b) above if the minor mineral is sold by the owner or occupant of the agricultural land he shall pay the royalty to the State Government at the rate specified in Schedule-II as well as average Additional Periodic Payment, and that transportation of the minor mineral shall be undertaken only with a valid Mineral Dispatch Permit.

12. As noted earlier, a permission was sought by the petitioner to use the excavated minor minerals from the land having an area of 629.92 acres in the same land for construction of foundation of a water reservoir.

13. Perusal of Rule 3A shows that activities specified in Clauses-(a) and (b) are exempted from obtaining quarrying lease or licence in accordance with sub-rule (1) of Rule 3. We

are proceeding for the time being on the footing that the word “and” used at the end of Clause (a) can be read as “or”. Thus, the exemption under Rule 3A is applicable in following cases:

a) For digging the wells for water, for quarrying of minerals other than sand for desilting ponds or tanks and for digging of earth for foundation of building and disposal of minor mineral extracted thereof;
b) When minor minerals are removed for agricultural field for bonafide use and/for betterment of the agricultural land for the occupant himself subject to certification by the agricultural department to that effect.

14. Even according to the case of the petitioner, Clause (b) which deals with the removal of minor mineral from agricultural field for bonafide use and betterment of the agricultural land is not applicable. Clause (a) deals with excavation made for the particular purposes as specified therein. The first purpose covered by Clause (a) is for digging of well for water. Though on the last date, a submission was made that the construction of artificial reservoir for water amounts to digging of a well, today, the said submission has been given up. In any case, a well cannot be equated with a huge reservoir on the land of the size of 629.92 acres. Such a reservoir cannot be termed as a well. The second purpose is de-silting of ponds or tanks. The third purpose is digging of

earth for foundation of buildings. Thus, (a) makes a distinction between wells, ponds, tanks and buildings as all the four words have been used. Clause (a) is not applicable merely because the minor minerals excavated by digging are used by the person on the same land. It will apply only if the minerals are used for the purposes specified in Clause (a). This is not a case where the minerals are sought to be used for digging of wells or for desilting of ponds and tanks. Now, the question is whether the activity of making foundation of an artificial tank will amount to construction of building. The Legislature, in the same Clause (a) has referred to ponds and tanks as well as Wells. Therefore, by no stretch of imagination, the word 'building' used in Clause (a) will apply to creation of impounding reservoir and for making foundation for the said reservoir. If the Legislature intended to include construction of foundation for tank in Clause (a), it would have specifically said so as Clause (a) refers to digging for desilting of a tank. Thus, on plain reading of Clause (a) of Rule 3, the same will not apply to the use of excavated minor minerals for making foundation of the impounding reservoir. As stated earlier, Clause (b) of Rule 3A does not apply. Now, coming to the second proviso to Rule 3A, it is applicable only in a case where Clause (a) or Clause (b) is applicable.

16. Thus, it follows that Rule 3A granting exemption from

applicability of Rule 3 of the said Rules will not apply to the present case.

17. The letter dated 12th April 2018 addressed by the Secretary to the State Government to the Director of Mines and Geology states that the case should be treated under Rule 3A. It is only an opinion of the Secretary. The said Rules do not confer a power on the Secretary to adjudicate whether the exemption is applicable. Under writ jurisdiction under Article 226 of the Constitution of India, the Court will have to decide whether Rule 3A is applicable to the excavation undertaken by the petitioner. If the petitioner wants to rely upon the letter dated 12th April 2017, then we may note here that Clause-3 of the same also provides that royalty will be collected for mining of minor minerals. Even the work order dated 04th October 2017 contains Clause-3 which provides for collection of royalty on mining operations.

18. Now, coming to the decision of the Apex Court in the case of PROMOTERS AND BUILDERS ASSOCIATION OF PUNE (supra), the Apex Court was dealing with sub-section (7) of Section 48, which is quoted in paragraph 9 which reads thus:

> "9. We may proceed to analyse the issue arising by reproducing Section 48(7) of the Code under which the impugned actions have been made. " 48. Government title to mines and minerals-
>
> (7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields bandhas(whether on the plea of repairing or construction of bunds of the

fields or on any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market values of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be.

Provided that, if the sum so determined is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector pay impose."

19. Thus, the Apex Court was dealing with only a limited issue of exercise of power by the Collector to levy penalty. In fact, sub-section 7 specifically incorporates that in case of illegal excavation, the State Government may always take recourse to other mode of action. Without prejudice to the other modes of taking action for illegal excavation, an authority has been granted to the Collector to levy penalty. It is in the context of penal power to collect penalty that the findings have been rendered by the Apex Court in this case. The Apex Court in the said case was not dealing with the issue of the liability to pay royalty. We are concerned with the issue whether Rule 3A granting exemption from the applicability of Rule 3 is applicable. Therefore, the said decision will have no application.

20. Now, turning to the obligation for payment of royalty,

as pointed out earlier, along with the letter dated 24th May 2017, the petitioner forwarded a cheque in the sum of Rs.4,00,00,000/- by way of advance towards the royalty charges for minerals used for construction of the water reservoir. It specifically refers to earlier letters and records that balance royalty payment would be made as per terms and conditions of lease or licence.

21. The conclusion which we have recorded above is that exemption under Rule-3A is not applicable to the petitioner and therefore, Rule 3 providing that no person shall undertake any quarrying operation in respect of any minor minerals except according to quarrying lease or licence is applicable. Thus, for carrying out excavation of minor minerals, the petitioner was under an obligation to obtain a licence. Instead of taking action against the petitioner for carrying out excavation of minor minerals in contravention of Rule 3 of the said rules, a demand was made for payment of royalty and other amounts in terms of Rule 36 by proceeding on the assumption that there was a lease or a licence granted to the petitioner to excavate minor minerals. It is not the case of the petitioner that the amount demanded by way of royalty is not asper the schedule to the said Rules of 1994.

22. Thus, the petitioner could not have carried out excavation of minor minerals without complying with Rule 3 by obtaining a quarrying lease or a licence. The State Government

has shown leniency though there is an illegal excavation of minor minerals without licence, by demanding royalty by proceeding on the footing that the petitioner has carried out excavation lawfully after obtaining a licence or a lease. The ultimate demand for royalty is in terms of the work order on which the petitioner has acted upon long back.

23. In the circumstances, we find no illegality in the demand for royalty made by the State Government. Even otherwise, we must note here that the petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner has carried out the work of excavation of minor minerals without complying with Rule 3 of the said Rules by obtaining a lease or a licence. The State has levied royalty on the footing that the petitioner has complied with Rule 3 of the said Rules. Therefore, even otherwise, this is not a fit case where jurisdiction under Article 226 of the Constitution of India can be allowed by the petitioner for challenging the levy of penalty.

24. Accordingly, we pass the following order:

(i) Writ Petition is rejected.

(ii) In view of disposal of the petition, I.A.No.1/2019 for stay does not survive and it is disposed of.