

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.12675 OF 2017

Between:

M/s. Pallavi-Maa-GC-(JV)

... **Petitioner**

And

The Union of India & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.12675 OF 2017****% 03.06.2024****Between:**

M/s. Pallavi-Maa-GC-(JV)

... Petitioner**And**

\$ The Union of India & others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.C.Hanumantha Rao**^ Counsel for Respondents** : Mr.P.Bhaskar, Ld.S.C.for
R1 to R5
G.P. for Mines and Geology,
for R6.

? Cases Referred:

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THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.12675 OF 2017****ORDER:**

Heard Mr.C.Hanumantha Rao, learned counsel appearing on behalf of the petitioner, Mr.P.Bhaskar, learned Standing Counsel appearing on behalf of respondent Nos.1 to 5 and learned Government Pleader for Mines and Geology appearing on behalf of respondent No.6.

PRAYER:

2. **The petitioner approached the court seeking prayer as under:**

"...to issue writ order or direction especially one in the Nature of Writ of Mandamus declaring the action of the respondents in deducting @ 30% towards District Mineral Foundation Fees and 2% State Mineral Exploration Trust, in total deducting 32% on the seigniorage charges from the running bills payable to the petitioner is illegal, arbitrary and violative of the Article 19(1)(g) of the Constitution of India and consequently direct the respondents not to deduct 30% towards District Mineral Foundation Fees and 2% State Mineral Exploration Trust, in total deducting 32% on the seigniorage charges from the petitioner or in the alternative it

is prayed that this Hon'ble Court may be pleased to direct the Respondents to reimburse the amount deducted towards Mineral Development Fund at 30% of the seigniorage charges and also 2% of the seigniorage charges towards State Mineral Exploration Trust and pass..."

3. PERUSED THE RECORD:

A) Counter affidavit filed by the respondents, in particular, the relevant paras 3, 4, 5, 6, 7, 8, 9 and 10, read as under:

"3. I submit that the seigniorage charges, if increased, will be recovered from the contractors "on account" and "final bills" and remitted to state government. However, the reimbursement of the increased seigniorage to the contractor will be applicable only in respect of condition 19(3)(a) of the agreement i.e., for seigniorage charges and not for condition 19.4 of the agreement which is applicable to all other taxes, duties, levies etc., except for seigniorage charges. The clauses mentioned about seigniorage charges in the agreement are reproduced below.

Clause no.19.1 of the agreement condition.

"Seigniorage charges/fee for consumption of earth, moorum, sand and other minerals in works execution as fixed by the state government from where the minerals are drawn and payable to them as revised from time to time during currency

of contract will be recovered by the Railway from the contractors, in "on account" and "final bills" and remitted to the State government, unless exemption obtained to the contrary or proof of payment of seigniorage charges submitted as indicated below:

Clause No. 19.3(a) of the agreement condition

"For any subsequent increase or decrease in the rates of seigniorage charges, reimbursement / recovery will be effect to/from the contractor as per the following provisions.

a) For increase in the rates of seigniorage charges after the last date of submission of tender the increased amount will be recovered by the Railway from the contractors, in "on account" and "final bills" and remitted to the State Govt., on receipt of state Govt.'s order to that effect. However, the Railway shall reimburse the additional liability to the contractor, provided that the work executed falls in the original completion period of the work or in the extended period granted on administrative grounds i.e., under clause 17-A (i), (ii) or (iii) of IRSGCC.

Clause No.19.4 No additional amount will be paid or claim entertained on this account by the Railway. Contractor shall not have any claim whatsoever as a result of the increase in the rates of all other taxes, duties, octroi or any form of levies etc., even if incurred on the supply/use of minerals indicated above.

Hence DFM, MERIT are to be treated as levies which comes under 19.4 and are to be borne by the contractor.

4. It is submit that the petitioner entered into agreement to deduct seigniorage charges as per the rate prevailing on the date of submitting tenders, i.e., on 14.09.2015, the liability with respect to other taxes, duties, levies etc., as per condition 19.4 of the agreement still persists upon the contractor.

5. I submit that the proceedings vide W.Con.Dy.CPM/WCSP/NDKD-KHT dt.30.11.2016 was issued based on Assistant Director of Mines and Geology/Guntur letter No.846/DFM/2016 dated 10-11-2016, as per the proceedings, 30% on seigniorage fees will be deducted from contractor's on account and final bills for payment towards District mineral foundation (DMF) However, the reimbursement to the contractor with respect to recovered DMF fees is not applicable as per condition 19.4 of the agreement. It is to state that the additional 30% charged as DMF is not the seigniorage charges.

6. I submit that the petitioner entered into agreement with the Railways in which the condition 19.4 of the agreement specifically states that all other taxes, levies, duties etc., are to be borne by the contractor and will be recovered from on account and final bills and will not be reimbursed in future. It is to state that the Railways has no

obligation to pay DMF (30% on seignorage, fees) which is in the nature of levies as per condition 19.4 of the agreement.

7. I submit that the DMF fees so recovered falls under condition 19.4 of the agreement which has agreed upon by the contractor for recovering from running bills without any question of reimbursement. As such, recovery is not illegal and arbitrary and as per the law of the land. The same is applicable to MERIT which is 2% of seignorage fees deduction from running bills with respect of state mineral exploration fund. Hence DFM & MERIT which comes under clause No.19.4 of the agreement.

8. I submit that the Deduction of 30% of seignorage fees towards DMF and 2% of seignorage fees towards State Mineral Exploration Trust is not illegal as the contractor has agreed for recovering any other taxes, fees, duties levies etc., as per condition 19.4 of the agreement.

9. I submit that it is to submit that the DMF @30% is being deducted on the basis of State of AP framed DMF rules and the liability of the payment is upon the contractor who has agreed for the same while entering into agreement. As such, agreeing for reimbursement is violative of condition 19.4 of the agreement and a loss to Public exchequer.

10. I further submit that from the language employed in the GOs, this amount as directed to be recovered is only a

contribution towards DMF and SMETF and the contribution is quantified based on the seigniorage fee. Hence, the said 30% or 2% to be recovered on seigniorage, per se, is not part of seigniorage fee, but it is only an additional amount imposed by the State Government on the Contractors."

B) Interim order of this Court dated 11.04.2017 passed in W.P.M.P.No.15758 of 2017 in W.P.No.12675 of 2017, observed as under:

"Any deduction of the amount towards district mineral fund and state mineral exploration trust fund on the seigniorage charges from the running bills of the petitioner shall be subject to further orders in the writ petition."

Interim orders of this Court dated 11.04.2017 passed in WPMP No.15758 of 2017 in W.P.No.12675 of 2017 referred to above are in force as on date.

4. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:

i) The petitioner is a partnership firm operating under the name and style "M/s Pallavi-Maa-GC-(JV)" and in pursuance of tender notification No.24/CAO/C/SC/2015 dated 06.08.2015 issued

by the 3rd respondent inviting sealed tenders for execution of work 'Nadikudi - Srikalahasti New BG line Project-Piduguralla - Rampicherla Section - Earthwork in embankment and cutting including construction of Minor bridges and other miscellaneous works from Ch.4500 to Ch.21300 in Reach-1 between Piduguralla (New) and Rampicherla (Pro) stations, the petitioner submitted its sealed tender on 14.09.2015 at 11.00 AM and tenders were opened on 14.09.2015 at 11:30 AM and finalized on 03.02.2016. The petitioner being the lowest tenderer, is declared as successful bidder. Thereafter, the Railway Department issued Letter of Acceptance dated 15.02.2016.

ii) The petitioner entered into agreement of works dated 28-04-2016 with the 2nd respondent for performance of work 'Nadikudi - Srikalahasti New BG line Project-Piduguralla - Rampicherla Section - Earthwork in embankment and cutting including construction of Minor bridges and other miscellaneous works from Ch.4500 to Ch.21300 in Reach-1 between Piduguralla (New) and Rampicherla (Pro) stations (Two packet system) and the petitioner deposited earnest deposit of Rs.24,40,000/- by way of bankers cheque No.348636 dated 11.09.2015 drawn on SBH,

Vanasthalipuram Branch. The balance security deposit of Rs.2,22,92,270/- will be recovered from the running bills at the rate of 10% till the balance security deposit amount is fully recovered.

iii) As per the agreement the security deposit shall be released only after the expiry of the maintenance period and after passing the final bill based on "No Claim Certificate". The petitioner also submitted performance guarantee in the form of bank guarantee No.86431PEBG160012 dated 14.03.2016 for Rs.2,47,50,000/- issued by Bank of India, Dilsukhnagar Branch which is valid upto 13th May, 2017.

iv) It is the case of the petitioner that, as per the agreement the work should be completed within 12 months and later on, the date of completion of work is extended from 16.02.2017 to 31.10.2017 by the 3rd respondent by executing subsidiary agreement dated 28.02.2017 and the bank guarantees were also extended up to 13.05.2018.

v) While this stood thus, the 3rd respondent issued proceedings in W.Con.Dy.CPM/WCSP/NDKD-KHT dated 30.11.2016 stating that the State Government of Andhra Pradesh issued rules

for establishment of District Mineral Foundation in terms of amended Mines and Minerals Regulation and Development Act and framed rules named as District Mineral Foundation Rules, 2016, and according to the said rules, Mining lease, Prospecting Licence or Quarry Lease Holders shall pay the DFM equivalent to 30% of the seigniorage charges paid to the State Government.

vi) It is the case of the petitioner that, subsequent to issuance of above said proceedings, the petitioner was informed that in view of the introduction of District Mineral Foundation Rules, 2016, they will deduct 30% of the seigniorage charges in addition to seigniorage from the petitioner from its running bills and the 3rd respondent stated that the said charges might not be reimbursed.

vii) It is the specific case of the petitioner that, the condition No.19(3)(a) contemplates that if there is increase in the seigniorage fees, the same will be recovered from the running bills, however the excess amount which is recovered will be reimbursed at a later point of time. Thus, when the seigniorage charges were agreed to be reimbursed, the proposed DMF @ 30% on the

seigniorage charges also should be reimbursed, otherwise the same would lead to miscarriage of justice.

Therefore, collection of DMF @ 30% on the seigniorage charges from the running bills payable to the petitioner without any assurance of repayment/reimbursement, is illegal and arbitrary. Hence, this Writ Petition.

DISCUSSION AND CONCLUSION:

5. Clause no.19.1 of the agreement condition, is extracted hereunder:

"Seigniorage charges/fee for consumption of earth, moorum, sand and other minerals in works execution as fixed by the state government from where the minerals are drawn and payable to them as revised from time to time during currency of contract will be recovered by the Railway from the contractors, in "on account" and "final bills" and remitted to the State government, unless exemption obtained to the contrary or proof of payment of seigniorage charges submitted as indicated below:

Clause No. 19.3(a) of the agreement condition is extracted hereunder:

"For any subsequent increase or decrease in the rates of seigniorage charges, reimbursement / recovery will be effected to/from the contractor as per the following provisions.

a) For increase in the rates of seigniorage charges after the last date of submission of tender the increased amount will be recovered by the Railway from the contractors, in "on account" and "final bills" and remitted to the State Govt., on

receipt of state Govt.'s order to that effect. However, the Railway shall reimburse the additional liability to the contractor, provided that the work executed falls in the original completion period of the work or in the extended period granted on administrative grounds i.e., under clause 17-A (i), (ii) or (iii) of IRSGCC.

Clause No.19.4: No additional amount will be paid or claim entertained on this account by the Railway. Contractor shall not have any claim whatsoever as a result of the increase in the rates of all other taxes, duties, or any form of levies etc., even if incurred on the supply/use of minerals indicated above."

6. On perusal of clause 19, 19.1, 19.3 (a), 19.4 of the Agreement it is evident that as per condition No.19 of the Agreement, the Department is entitled to deduct Seigniorage Charges per cubic meter as per the rate prevailing on the date of the bid. However, condition 19(3) (a) of the Agreement indicates that if there is any increase of rates of seigniorage charges after the last date of submission of tender, the enhanced amount will be recovered by the respondents from the contractors "on account" and "final bills" and remit to State Government on receipt of the State Government's order to that effect. However, the Railway Authorities shall reimburse the additional liability to the contractor i.e., difference between seigniorage as on the date of bid and enhanced seigniorage charges. Therefore, it is clear that the

petitioner is not liable for any additional burden or additional payment on the minerals consumed on the ground of change of policy of the state Government increasing the seigniorage charges. A bare perusal of the record indicates that the petitioner entered into agreement for completion of the earthwork subject to only deduction of seigniorage charges as per the rate prevailing on the date of submitting tenders i.e., 14.09.2015. Therefore, this Court opines that no other liability can be cast upon the petitioner on any ground.

7. This court on perusal of the record and on perusal of Clause 19, 19.1 of the Agreement condition about Seigniorage charges in the Agreement, Clause No.19.3 (a) of the Agreement condition and clause No.19.4 opines that the petitioner cannot be burdened by the Railway Authorities for payment of DMF @30% which came into existence after opening of tenders therefore it is the duty of the Railway to reimburse the same. This Court opines that petitioner cannot be burdened with additional taxes if any levied subsequent to the date of opening/negotiations of the tenders and hence the said amounts deducted shall be reimbursed to the contractor.

8. The pleas put forth by the learned counsel appearing on behalf of the respondents are untenable and hence rejected.

9. **Taking into consideration:**

(I) The aforesaid facts and circumstances of the case,

(II) Duly considering the condition 19.3(a) of the Agreement

(III) The writ petition is allowed as prayed for.

However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.

B/o. *Yvkr*