

[Minor Mineral Rules] State Has Revisional Jurisdiction Over Demand Notice Issued By Non-Designated Officer With Controlling Authority's Approval: Karnataka HC

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRASANNA B. VARALE, C.J., ASHOK S. KINAGI; J.

WRIT PETITION NO. 22038 OF 2022; 14 November, 2022

A.N. Murthy *versus* State of Karnataka

Petitioner: Adv. Chandranath Ariga K;

Respondents: Adv. S.S. Mahendra, AGA

ORDER

The learned Additional Government Advocate accepts notice for the respondents.

2. The very limited issue is involved in the present petition. The petitioner is the lessee of the quarry in survey No.272 to an extent of 1 acre 8 guntas situated at Sadahalli Village, Devanahalli Taluk, Bengaluru Rural District issued by the Competent Authority i.e., the Director, Department of Mining and Geology on 31.12.2014 for a period of 20 years. It may not be necessary to refer to other factual aspects, suffice to say that respondent No.4-Deputy Director, Department of Mining and Geology issued various demand notices to the petitioner for payment of outstanding penalty amount and the copy of such one demand notice dated 23.01.2020 is placed on record at page 120. The notices refer to the various outstanding amount and certain defects were observed in the inspection of the audit report. These demand notices conclude with the statement as follows:

“This demand letter is approved by the Hon’ble Director”.

3. Being aggrieved by the demand notices, the petitioner submitted Revision Petition under Rule 53(2) of the Karnataka Minor Mineral Concessions Rules, 1994 (for short ‘the Rules, 1994’) before the State Government i.e., the Secretary, Department of Industries and Commerce, Bangalore. By the communication dated 28.07.2022, the Under Secretary to the Government informed the petitioner that as per the provisions of Rule 53 (2) of the Rules, 1994, Revision is maintainable before the Government, only for the orders passed by the Authorities above the rank to that of Additional Director, Mines and Geology Department. The petitioner was further informed that the Revision Petition filed before the Government is not maintainable as per Rule 53 (2) of the Rules, 1994.

4. The learned counsel for the petitioner invited our attention to the various provisions of the Rules, 1994.

5. The Definitions clause of the Rules, 1994 refers to the terms ‘Controlling Authority’ and ‘Director’ in Rule 2 (c) and (d) of the Rules 1994, which reads as follows:

“(c) “Controlling Authority” means a Controlling Authority appointed under Rule 5;

(d) “Director” means the Director, Department of Mines and Geology.”

Rule 5 of the Rules, 1994 reads as follows:

“Controlling Authority, - The State Government may by notification appoint the Director or any other officer to be Controlling Authority for all or any of the purposes of these rules, within such limits as it may assign to them respectively.”

In CHAPTER IX Revision and Miscellaneous, Rule 53 of the Rules, 1994 reads as follows:

53. Revision. – (1) Any person aggrieved by an order of the Competent Authority not above the rank of Additional Director may, within sixty days of the date of communication of such order apply in Form-RV to the Controlling Authority for revision of such order.

(2) Any person aggrieved by an order of the competent authority above the rank of Additional Director may, within sixty days from the date of communication of such order apply in Form-RV to the State Government for revision of such order.

6. By way of notification dated 18.11.2016, the State Government specified certain officers of the Department of Mines and Geology to be the Controlling Authority and reference is made to the Joint Directors North Zone/South Zone and the applicability of the Rules for those designated officers and area specified is their respective jurisdiction.

7. Admittedly, the demand notices issued by the Deputy Director are approved by the Director, who himself is the Controlling Authority. In these facts situation, the petitioner was justified in submitting the Revision petition, being aggrieved by the demand notices which were approved by the Director i.e., Controlling Authority, to the State Government. The communication dated 28.07.2022 issued by the Under Secretary to the Government informing the petitioner that Revision petition filed by the petitioner is not maintainable before the State Government is clearly unsustainable.

8. As stated above, the petitioner has not committed any error in submitting the revision petition, being aggrieved by the issuance of demand notices by the Deputy Director on an approval by the Director, to the State Government for its consideration.

9. Accordingly, this being a limited scope of grievance and as we are of the opinion that the communication dated 28.07.2022 is clearly unsustainable, the writ petition is partly allowed. The communication dated 28.07.2022 is quashed and set aside and Revision Petition filed by the petitioner is maintainable. The respondent-State is directed to consider the Revision Petition filed by the petitioner under Rule 53(2) of the Rules, 1994. Needless to state that the same shall be decided on the merits of the Revision Petition, by giving an opportunity of hearing to the petitioner and the Revision Petition be decided as early as possible and not later than three months (12 weeks) from the date of receipt of copy of this order.

10. Office is directed to provide an authenticated copy to the learned counsel for the parties. Parties are directed to act on the authenticated copy.

11. It is submitted by the learned counsel for the petitioner that when the Revision Petition challenging the earlier notices was pending before the State Government, a fresh demand notice was issued to the petitioner on 23.08.2022 and the copy of the same is placed on record at Annexure-Q (page 189).

12. The learned counsel for the petitioner prays for amendment of the Revision Petition by raising additional grounds as well as by raising the challenge to the notice dated 23.08.2022. Liberty sought for is granted.