

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.34936 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the proceedings in Demand Notice No.1609/VG/2012, dated 28.08.2015 raising demand as arbitrary, illegal, unjust and unconstitutional, in violation of principles of natural justice, non-consideration of explanation furnished by the Petitioner and in violation of Mines and Minerals (Development & Regulation) Act 1957 and Mineral Concession Rules 1960, consequently call for records in the above proceedings and set aside the same.”

Heard Smt.N. Shoba, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondents, apart from perusing the material available before this Court.

The petitioner herein is a cement manufacturing company and the petitioner was granted mining lease for Limestone in respect of Ac.1686.58 in Pondugala and Pulipadu villages of Gurzala mandal, Guntur District. The Deputy Director of Mines and Geology – 3rd respondent herein issued show cause notice bearing No.1609/M2/2012, dated 11-05-2012. In response to the said show cause notice the petitioner herein filed explanation on 30-05-2012. Subsequently, the Deputy Director of Mines and Geology vide demand notice No.1609/VG/2012, dated 28-08-2015 directed the petitioner herein to pay a sum of Rs.34,48,170/- towards royalty and an amount of Rs.1,64,199/- towards Cess on MBL and an amount of Rs.68,964/- towards I.T. within 15 days

from the date of receipt of notice.

Calling in question the validity and legal sustainability of the said order passed by the Deputy Director of Mines and Geology the present writ petition has been filed.

It is contended by the learned counsel for the petitioner herein that the questioned order is highly illegal, arbitrary and unreasonable and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960. It is further submitted by the learned counsel that even though the petitioner herein submitted an elaborate explanation the Deputy Director of Mines and Geology did not consider the said explanation from proper perspective. It is also argued by the learned counsel that since the order impugned is a non-speaking order, the same is liable to be set aside. It is also submitted by the learned counsel that since the impugned action has the civil consequences it is obligatory on the part of the 3rd respondent to assign the reasons for arriving at the conclusions.

On the contrary, it is strenuously contended by the learned Government Pleader that there is no illegality nor there is any procedural infirmity in the impugned action, as such, the petitioner herein is not entitled for any relief under Article 226 of the Constitution of India and the present writ petition is liable to be dismissed. It is also the submission of learned Government Pleader that in view of the availability of alternative remedy of revision to the Union of India under Rule 54 of the Mineral

Concession Rules, 1960 (for short, the Rules') the present writ petition before this Court under Article 226 of the Constitution of India is not maintainable.

The material available before this Court manifestly discloses that in response to the show cause notice issued by the Deputy Director of Mines and Geology on 11-05-2012 the petitioner herein submitted an elaborate explanation on 30-05-2012, touching various aspects. It is also clear from the explanation offered by the petitioner herein that the petitioner sought for personal hearing before proceeding with the issue. A perusal of the impugned demand notice in the present writ petition, in clear and unequivocal terms, discloses that except indicating the reply submitted by the petitioner herein as one of the references, the Deputy Director of Mines and Geology did not advert to any one of the averments in the said explanation submitted by the petitioner herein. It is also clear from the impugned demand notice that no reason whatsoever much less valid reason is assigned by the Deputy Director of Mines and Geology, Guntur for arriving at the conclusion and this in the considered opinion of this Court cannot be sustained. It is also required to be noted, as pointed out by the learned Government Pleader, that as against the impugned demand notice revision lies to the Union of India as per Rule 54 of the Rules.

In view of the availability of said alternative remedy of revision available to the petitioner herein, this Court is not inclined to adjudicate the validity or sustainability of the impugned demand notice. However, this Court is inclined to relegate the petitioner herein to the said alternative remedy of revision to the Union of

India and this Court is also inclined, in the facts and circumstances of the case, to protect the interest of the petitioner herein for a reasonable time so as to enable him to file revision before the Union of India.

For the aforesaid reasons, the writ petition is disposed of, permitting the petitioner herein to file statutory revision under Rule 54 of the Rules against the impugned demand notice, dated 28-08-2015 issued by the Deputy Director of Mines and Geology within the statutory period as prescribed under Rule 54 of the Rules. However, the respondents herein shall not give effect to the impugned demand notice for a period of two (2) months from today. It is open for the petitioner herein to file appropriate stay application before the revisional authority. It is also made clear that the revisional authority shall pass appropriate orders on the revision, as expeditiously as possible, preferably within a period of three (3) months from the date of filing of the revision by the petitioner.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

October 29, 2015

Note: Furnish C.C. in
three (3) days. B/o.Pn

-

-

-

-

THE HON'BLE SRI JUSTICE A.V. SESA SAI

-

Note: Furnish C.C. in
three (3) days. B/o.Pn