

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.1607 OF 2014

DATED:30.1.2015

Between:

Patan Mahaboob Saheb ... Appellant

And

The State of Andhra Pradesh
Rep. by its Principal Secretary
Industries & Commerce Deptt.,
Secretariat
Hyderabad
and others ... Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.1607 OF 2014

JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

By consent of the learned counsel appearing for the parties, the appeal is admitted for hearing and is being finally disposed of by the following judgment and order, of course the judgment is not rendered on the basis of any concession or consent, and it is of our own.

2. The appellant – writ petitioner filed a writ petition challenging the order dt.21.2.2013, by which after considering the petitioner's explanation respondent No.3 imposed a penalty of Rs.31,73,029/- under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960. It appears that this action was taken by the Government after having detected alleged illegal mining by the petitioner done beyond the leased area. On an earlier occasion, the writ petitioner came to this Court by filing W.P. No.3592 of 2013 which was disposed of by a learned single Judge treating the earlier demand notice as a show cause notice and the petitioner was granted fifteen days time to submit his explanation to the same. Pursuant to the above order, an explanation was offered by the petitioner and on receipt thereof, the impugned order of demand has been passed. It is the grievance of the petitioner that without considering the explanation specifically in the impugned order of demand, the matter was disposed of, which is contrary to the observations of the learned single Judge given in the

earlier writ petition filed by the petitioner.

3. With the aforesaid statements and averments basically the petitioner has approached this Court with the writ petition in which the impugned order has been passed by the Hon'ble single Judge.

4. The learned counsel for the appellant - writ petitioner submits that the learned single Judge was not called upon to go into merits of the matter as it was the grievance before His Lordship that without considering the explanation in terms of the earlier order of this Court the impugned order of demand was passed. The present impugned order of the learned single Judge was passed at the admission stage and without any material to give an adverse fact finding against the petitioner fixing the liability to pay the aforesaid amount.

5. After hearing the learned counsel for the respondents and going through the impugned judgment and order of the learned single Judge, we find that His Lordship instead of deciding real issue raised in the writ petition thought it fit to decide the matter once for all on merit finally. According to us, this should have been done inviting a counter affidavit and without the same the fact-finding should not have been reached, as no one can be denied ones right to answer to the complaint. We are therefore of the view that the appeal has to be allowed to the extent indicated herein below.

6. We set aside the judgment and order of the learned single Judge and direct respondent No.3 to re-hear the matter, consider the explanation offered by the petitioner, specifically after giving him personal hearing to the petitioner, and pass a speaking order without being influenced by the reasoning of the Hon'ble single Judge. This exercise, however, will be undertaken and this order of ours will be operative provided the appellant – writ petitioner deposits the entire amount as quantified in the demand notice i.e., Rs.31,73,029/-, within a period of four weeks from date, failing which this appeal will stand dismissed and the judgment and order of the Hon'ble single Judge will stand revived. In the event the deposit is made, the entire exercise

shall be completed within eight weeks from the date of deposit or from the date of expiry of the time to make deposit in terms of this order.

7. The appeal is accordingly allowed.

Pending miscellaneous petitions shall stand closed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

30.1.2015

bnr