

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

WRIT PETITION No.19238 of 2015

ORDER:

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

“to issue Writ of Mandamus declaring the action on the part of the 1st respondent in issuing the impugned memo No.8100/M.II(2)/2011-3, dated 21-05-2015 and the consequential memo No.8100/M.II(2)/2011-4, dated 01-06-2015 as illegal, arbitrary, violative of the well settled principles of natural justice apart from being contrary to the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 and the Rules made thereunder and consequently set aside the same.”

Heard Sri Pannala Srinivas, learned counsel for the petitioner and learned Government Pleader for Mines and Geology.

The Assistant Director of Mines and Geology, Palamaneru – 4th respondent herein issued demand notice No.341/Q/2007, dated 02-05-2011, directing the petitioner herein to pay an amount of Rs.43,45,000/- (Rs.3,95,000/- towards seigniorage fee and Rs.39,50,000/- towards 10 times penalty). Challenging the said demand notice the petitioner herein preferred revision on 01-06-2011 under Rule 35-A of the A.P. Minor Mineral Concession Rules, 1966 (hereinafter called, ‘the Rules’).

Earlier the petitioner herein filed W.P.No.3376 of 2014 and this Court by way of an order, dated 07-02-2014 disposed of the said writ petition directing the first respondent herein to deal with the revision filed by the petitioner herein, as expeditiously as

possible, preferably within a period of two months from the date of receipt of a copy of the order, after affording an opportunity of hearing to the petitioner herein. In the said order this Court also directed the petitioner herein to deposit a sum of Rs.10,00,000/- with the District Collector, Chittoor, towards penalty imposed by the Assistant Director of Mines and Geology, Palamaneru.

As against the said order the petitioner herein preferred W.A.No.191 of 2014 and a Division Bench of this Court by way of an order, dated 18-02-2014 modified the said order, permitting the petitioner herein to deposit Rs.5,00,000/- instead of Rs.10,00,000/- . In terms of the orders of the learned Single Judge, according to the petitioner, the said amount was deposited.

Thereafter on 02-03-2015 vide memo No. 8100/M.II(1)/2011-2, dated 02-03-2015 the 1st respondent herein directed the petitioner herein to appear for hearing on 06-03-2015 at 10.00 A.M. The envelope containing the said memo, dated 02-03-2015 is placed on record by the petitioner, which shows that the same was posted on 04-03-2015. The material placed on record discloses that learned counsel for the petitioner filed a memo No.8100/M.II(1)/2011-1, dated 04-03-2015 before the 1st respondent herein, requesting to adjourn the matter to any other future date as per the convenience of the authority. The 1st respondent vide memo No.8100/ M.II(2)/2011-3, dated 21-05-2015 passed an order directing the petitioner herein to pay three times penalty together with normal seigniorage fee while disposing of the revision filed by the petitioner herein.

In the present writ petition it is contended by the learned

counsel for the petitioner that as stated in the impugned order no hearing had taken place on 27-02-2015. It is further submitted by the learned counsel that totally ignoring the memo, dated 04-03-2015 and without giving any opportunity of hearing to the petitioner herein the 1st respondent herein passed the impugned order. It is further submitted that the said action on the part of the 1st respondent herein is totally in contravention of the Rules and the principles of *audi alteram partem*.

On the contrary, it is contended by the learned Government Pleader that questioned order is strictly in accordance with the provisions of the Rules and there is no illegality nor any material infirmity in the impugned order.

According to Rule 35-A of the Rules no order adversely affecting any person shall be passed under the said Rule unless such person has been given an opportunity of making his representation.

In the instant case, it is the categorical case of the petitioner herein that without giving any opportunity as provided under the said Rule 35-A of the Rules the 1st respondent herein passed the impugned order. It is settled and well established proposition of law that the orders of the quasi-judicial authorities should necessarily be supported by reasons. In the instant case, as evident from the impugned order the 1st respondent herein did not assign any reasons much less valid reasons for passing impugned order. The impugned action on the part of the 1st respondent herein is also, in the considered opinion of this Court, in violation of principles of natural justice.

When a notice was given on 02-03-2015, asking the petitioner to come to an enquiry on 06-03-2015 the question of affording personal hearing to the petitioner on 27-02-2015 would not arise.

In the facts and circumstances of the case, this Court has absolutely no scintilla of hesitation to hold that the questioned order passed by the 1st respondent herein is in violation of not only mandatory provisions of Rule 35-A of the Rules but also the principles of natural justice.

For the aforesaid reasons, the writ petition is allowed, setting aside the memo No.8100/M.II(2)/2011-3, dated 21-05-2015 and the matter is remanded to the 1st respondent herein for fresh consideration, in accordance with law, after giving notice and opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.V. SESA SAI, J

June 29, 2015

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

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