

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 24954 of 2010

Date: 08.06.2015

Between:

M/s. Maytas – Sankaranarayana – JV,
Hyderabad.

.... Petitioner

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Industries & Commerce Department,
Secretariat, Hyderabad and others.

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 24954 of 2010

ORDER:

This Writ Petition was instituted against the Government of Andhra Pradesh which is not *sui juris*. However, as the matter has been pending on the file of this Court for nearly five years, this Court is not inclined to dismiss the Writ Petition on this technical ground. The Registry is therefore directed to substitute 'The State of Andhra Pradesh' in the place of 'The Government of Andhra Pradesh' in the cause

title before issuing a copy of this order.

The grievance of the petitioner-company was as to the levy of five times penalty by the Mining Authorities of the State under the impugned proceedings dated 21.07.2010. The said proceedings were issued by the Assistant Director of Mines and Geology (Vigilance) (FAC), Tirupati, referring to an earlier demand notice dated 01.12.2008 said to have been issued to the petitioner by the Assistant Director of Mines and Geology, Chittoor. By way of these two proceedings, the Mining Authorities opined that the petitioner-company had failed to pay seigniorage charges on the sand utilised by it in execution of certain projects and was therefore liable to pay the penalty at five times the normal seigniorage fee. The demand notice dated 01.12.2008, referred to in the subsequent letter dated 21.07.2010, demonstrates that the petitioner was not put on notice prior to such conclusion being arrived at by the Mining Authorities and was not given an opportunity of hearing.

Rule 26(3)(ii) of the A.P. Minor Mineral Concession Rules, 1966, is relied upon by the learned Assistant Government Pleader for Industries and Commerce to justify the demand made upon the petitioner-company. This Rule reads as under:

“Rule 26 (3) (i)

- ii. If no documentary proof is produced in token of having paid the mineral revenue due to the Government by any person who used or consumed or in possession of any mineral including the processed mineral, he shall notwithstanding anything contained in sub-rule (1) be liable to pay five times of the normal seigniorage fee as penalty in addition to normal seigniorage fee leviable under the rules.”

The aforestated Rule demonstrates that the liability of the person using or consuming or found in possession of the mineral has to be determined by giving him an opportunity of producing documentary proof and putting forth his defence, if any. Failure to do so would not be in the spirit of the provision and would also be violative of the principles of natural justice.

At the time of admission of this matter, this Court granted interim suspension of the impugned demand notice dated 21.07.2010 subject to the petitioner -

company paying the seigniorage fee and not the penalty. The issue, insofar as it pertains to the penalty, is therefore still undecided.

In that view of the matter, the Writ Petition is disposed of directing the petitioner-company to submit its explanation to the impugned demand notice dated 01.12.2008 and the subsequent impugned letter dated 21.07.2010, treating them as show cause notices, within two weeks from the date of receipt of a copy of this order. The Assistant Director of Mines and Geology, Chittoor, the third respondent, shall give a personal hearing to the authorised representative of the petitioner-company and thereafter pass appropriate reasoned orders in accordance with law insofar as the quantum of penalty is concerned. This exercise shall be completed expeditiously and in any event, not later than two months from the date of receipt of the explanation of the petitioner – company.

Pending Miscellaneous Petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date: 08.06.2015

va