

-

-

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

-

-

Writ Petition No.22128 of 2015

-

Between:

-

M/s GVR Infra Projects Ltd.,
Rep. By its Authorized Signatory, Sri K.V.R.S.S. Sharma

-

...Petitioner

and

-

The State of Telangana, rep. By its Principal Secretary,
Mines & Geology, Secretariat, Hyderabad and others

-

...Respondents

-

Dated 17-07-2015

-

SUBMITTED FOR APPROVAL:

-

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

-

-

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No

-

2. Whether the copies of judgment may be
marked to Law Reporters/Journals ? Yes/No

-

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

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

Writ Petition No.22128 of 2015

-
-
ORDER:

This writ petition is filed under Article 226 of the Constitution of India, challenging the demand notice bearing No.329/RV&EO/SRPT/2015, dated 06-07-2015, issued by the Assistant Director of Mines and Geology, Vigilance, Suryapet, Nalgonda District, the 3rd respondent herein, asking the petitioner to pay a sum of Rs.8,39,223/- towards normal seigniorage fee and Rs.41,96,115/- towards five times penalty.

Heard Sri C. Raghu, the learned counsel for the petitioner and learned Government Pleader for Mines, Geology, Roads and Buildings, for the respondents, apart from perusing the material available before the Court.

According to the petitioner, it is a company, carrying on the works of execution of roads and infrastructures. The Central Government awarded projects, viz., Rehabilitation and Upgradation of Nakrekal to Nagarjuna Sagar Section of NH-565 from KM 1.000 to KM 86.057 in the State of Telangana, in favour of the petitioner. It is further stated in the writ affidavit that for the purpose of execution of the said contracts, the petitioner entered into an agreement with the leaseholder, M/s Sri Venkateswara Stone Crusher, located in Sy.No.379 of Charla Gouraram Village, Kanagal Mandal, Nalgonda District for extraction of stone boulders, which will be crushed in the crusher, owned by the petitioner-company. It is stated that for the

said exclusive purpose, the petitioner has set up a crusher. It is also stated that the petitioner is not carrying on any commercial activity in relation to the said crusher, and the same has been erected only for the purpose of the aforesaid contract.

While the matter stood thus, the Assistant Director of Mines and Geology, the 3rd respondent herein issued a show cause notice No.329/RV&EO/SRPT/2015, dated 12-05-2015, asking the petitioner to show cause as to why action should not be initiated for realization of the normal seigniorage fee of Rs.8,39,223/- along with five times penalty of Rs.41,96,115/-. In response to the said show cause notice issued, the petitioner herein submitted an explanation dated 02-07-2015, meeting various points raised in the show cause notice. Earlier, apprehending that the

3rd respondent would not consider the explanation offered by the petitioner herein, petitioner filed W.P.No.20619 of 2015 before this Court, and this Court by way of an order dated 07-07-2015 disposed of the said writ petition, and the operative portion of the said order reads as under:

“For the aforesaid reasons, the writ petition is disposed of, directing the Assistant Director of Mines and Geology – 3rd respondent herein to consider the explanation submitted by the petitioner herein vide Lr.No.GVRIPL/NH/NNR/PM/289, dated 02-07-2015 and pass appropriate orders pursuant to the show cause notice bearing No.329/RV&EO/SRPT/2015, dated 12-05-2015 issued by the 3rd respondent herein within a period of two (2) weeks from the date of receipt of a copy of this order. Till such exercise attains finality, there shall be no coercive action against the petitioner herein in pursuance to the show cause notice, dated 12-05-2015.”

-

The above said writ petition was filed on 06-07-2015 with the

above mentioned apprehension.

Now, by virtue of a demand notice bearing

No. 329/RV&EO/SRPT/2015, dated 06-07-2015, the 3rd respondent directed the petitioner herein to pay the amounts, as indicated in the show cause notice issued earlier.

Calling in question, the validity and legal sustainability of the said order passed by the 3rd respondent, the present writ petition is filed.

It is contended by the learned counsel for the petitioner that having issued the show cause notice, calling upon the petitioner herein to submit the explanation, and having received the explanation offered by the petitioner, it is incumbent on the part of the 3rd respondent to consider the contents of the same. It is further argued by the learned counsel that the 3rd respondent did neither refer to the show cause notice, in the references of the impugned demand notice, nor the contents of the explanation were considered. This action, according to the learned counsel for the petitioner, is in total violation of the Articles 14 and 19(1)(g) of the Constitution of India.

On the contrary, it is vehemently contended by the learned Government Pleader for Mines and Geology that there is no illegality nor any procedural infirmity in the orders passed by the 3rd respondent and in the absence of the same, the petitioner herein is not entitled for any relief from this Court, and the present writ petition is liable to be dismissed. It is also the submission of the learned Government Pleader that the present writ petition is not maintainable, in view of the alternative remedy of appeal available to the petitioner, under Rule 35 of the A.P Minor Mineral Concession Rules, 1956 (for short 'the Rules').

The 3rd respondent pressed into service the provisions of the Rules, and issued a show cause notice to the petitioner dated 12-05-2015, calling for its explanation. In response to the said show cause notice, the petitioner submitted its explanation on 02-07-2015, narrating the various aspects, touching the issues raised by the 3rd respondent herein in the show cause notice. Thereafter, the 3rd respondent herein issued the impugned demand notice 329/RV&EO/SRPT/2015, dated 06-07-2015, directing the petitioner herein to pay a sum of Rs.8,39,223/- and a penalty of Rs.41,96,115/-, while threatening action under the provisions of the Rules and also under the Revenue Recovery Act, without any further intimation. A perusal of the impugned demand notice manifestly discloses that the 3rd respondent herein did neither refer to the explanation offered by the petitioner in the references cited in the impugned demand notice, nor considered the contents of the explanation offered by the petitioner herein on 02-07-2015, nor the material placed by it. It is a settled and well-established proposition of law that when the actions on the part of the authorities have civil and penal consequences, the same shall be supported by valid and cogent reasons. In the instant case, the same is conspicuously absent.

Another aspect, as pointed out by the learned Government Pleader, is that under Rule 35 of the Rules, the petitioner herein has an effective alternative remedy of appeal against the demand notice, impugned in the present writ petition. In view of the same, the petitioner herein can avail the same; and taking into consideration, various aspects, as set out supra, this Court deems it appropriate to protect the interests of the petitioner herein, before filing the said statutory appeal.

For the foregoing reasons, the writ petition is disposed of, giving liberty to the petitioner herein to prefer appeal against the impugned demand notice No. 329/RV&EO/SRPT/2015, dated 06-07-2015, issued by the 3rd respondent herein before the Director of Mines and Geology, within the stipulated period.

If such an appeal is filed within the stipulated period, the same shall be considered and appropriate orders be passed in accordance with law. It is also made clear that the petitioner herein is also entitled to file a stay application along with the appeal, and pending such stay application before the Director of Mines and Geology, no coercive action shall be taken against the petitioner herein pursuant to the impugned demand notice dated 06-07-2015. It is also made clear that this order would not enure to the benefit of the petitioner herein, if it fails to file the appeal before the Director of Mines and Geology, within the time stipulated.

The miscellaneous petitions, if any, filed in the writ petition, shall also stand disposed of. There shall be no order as to costs.

-

A.V. SESA SAI, J.

Dt.17-07-2015.

KO