

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

WRIT PETITION No.2716 OF 2012

ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the Demand Notice bearing No.4376/Vg/2007, dated 24.04.2008, issued by the Assistant Director of Mines and Geology, Vijayawada.

2. Heard Sri Venkat Raghu Ramulu, learned counsel, appearing for the petitioner and learned Government Pleader for Mines and Geology and Industries and Commerce, appearing for the respondents, apart from perusing the material available before this Court.

3. Petitioner herein is an Engineering College and according to the petitioner, it is affiliated to Jawaharlal Nehru Technological University, Kakinada. The Assistant Director of Mines and Geology, Vijayawada – 3rd respondent herein issued a show cause notice bearing No.4376/Vg/2007, dated 19.11.2007, asking the petitioner to show cause as to why demand should not be raised against the Minor Minerals consumed by the petitioner during the course of construction. Subsequently, the Assistant Director of Mines and Geology, Vijayawada, issued demand notice bearing No.4376/Vg/2007, dated 24.04.2008, asking the petitioner to pay a sum of Rs.5,99,046/-, towards normal Seiginorage Fee and five times penalty of Rs.29,77,730/-. Assailing the said demand notice, dated 24.04.2008, the petitioner herein filed the present writ petition.

4. It is contended by the learned counsel for petitioner that the action of the 3rd respondent in raising the impugned demand is highly illegal, arbitrary, unconstitutional and contrary to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and A.P.Minor Mineral Concession Rules, 1966. It is further pleaded in the affidavit filed in support of the writ petition that despite giving

information to the 3rd respondent, the 3rd respondent is repeatedly addressing letters to pay the normal Seiginiorage fee.

5. In the instant case, there is no dispute with regard to the reality that in response to the show cause notice dated 19.11.2007, the petitioner herein did not submit any explanation, which resulted in issuance of Demand Notice bearing No.4376/Vg/2007, dated 24.04.2008 by the Assistant Director of Mines and Geology, Vijayawada, confirming the amount indicated in the Show Cause Notice.

6. When the matter is taken up today, a preliminary objection, regarding maintainability of the writ petition is taken by the learned Government Pleader by contending that as against the impugned demand notice issued by the Assistant Director of Mines and Geology, there is a statutory remedy of appeal under Rule 35 of the A.P.Minor Mineral Concession Rules, 1966, which reads as under:

“35. Appeal:— An appeal against any order passed by the Assistant Director or Deputy Director, Joint Director, under these rules shall lie to the Director within a period of two months from the date of communication of such order to the party aggrieved and an appeal against an order of the Director shall be to the Government in like manner.”

7. In the instant case, without availing the said alternative remedy of Appeal, the present writ petition has been filed by the petitioner herein under Article 226 of the Constitution of India. In view of the same, this Court deems it appropriate to relegate the petitioner herein for the said appellate remedy by imposing certain conditions.

8. For the aforesaid reasons, Writ Petition stands disposed of, permitting the petitioner herein to avail the Statutory Appeal under the provisions of Rule 35 of the A.P.Minor Mineral Concession Rules, 1966, against the demand notice bearing No.4376/Vg/2007, dated 24.04.2008, within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same shall be considered and appropriate orders be passed in accordance with law,

after giving notice and opportunity of being heard to the petitioner herein. It is also made clear that the petitioner herein shall deposit a sum of Rs.2,00,000/- (rupees two lakhs only) with the Assistant Director of Mines and Geology, within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that, if no such deposit is made with the Assistant Director of Mines and Geology, the appeal need not be considered and it is open for the respondents to proceed in accordance with law pursuant to the demand notice, which is impugned in the present writ petition.

9. Miscellaneous Petitions, if any, pending shall stand closed. No costs.

A.V.SESHA SAI,J

25.01.2016

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