THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.7786 OF 2009

ORDER:

The petitioner was granted the work of PR 2007-08 from Kms 25/0 to 37/0 on Vijayawada – Jagadalpur Sector NH 221. The work consists of providing and applying Tack Coat with Bitumen Emulsion and also construction of sub-grade and Earthen shoulders with approved materials obtained from borrow pits with allied and lifting with a lead of 4 kms, transporting to site, spreading, grading to required slope and compacting to meet requirement. Seigniorage charges should be deducted from the running bills at the rate prescribed by the Department of Mines and Geology. Accordingly, an amount of Rs.72,000/- was deducted towards the gravel utilized. While so, the petitioner received a show cause notice dated 26.06.2008 from the 3rd respondent informing that the Regional Vigilance and Enforcement Officer, Vijayawada submitted a report stating that the gravel was quarried in Survey No.86/1 of Kothachandra Gudem and 711/2B Pulluru Village of Mylavaram Mandal and requested the 3rd respondent to raise payment for the quantity of 3342 cubic meters of Gravel i.e. Rs.66,840/- towards normal seigniorage fee along with 10 times penalty. It is submitted that he was asked to submit explanation within a period of 15 days and accordingly the petitioner submitted its explanation. In spite of submission of the explanation, the petitioner was pressurised to deposit some amount and he deposited an amount of Rs.1,33,680/- towards normal seigniorage fee and one time penalty by way of challan bearing No.19409, dated 26.06.2008. The said amount was in addition to the amount of Rs.72,000/- deducted by the department from the running bills. In spite of the same, the 3rd respondent issued a demand notice on 17.07.2008, received by the petitioner on 15.11.2008 demanding an amount of Rs.7,35,240/-. The petitioner challenged the demand notice dated

17.07.2008 of the 3rd respondent in the present writ petition.

The facts in the case are not in dispute as the petitioner was entered into the agreement for execution of the work, for which he was required to get the material from borrow pits with allied and lifting with a lead of 4 kms. An amount of Rs.72,000/- was deducted towards seigniorage charges. When the 3rd respondent demanded payment of amount, the petitioner paid normal seigniorage fee and one time penalty, totalling to an amount of Rs.1,33,680/- in addition to the amount of Rs.72,000/- already deducted by the department from the running bills.

Learned counsel for the petitioner submitted that in view of the payment of the said amount, demand made by the 3rd respondent demanding an amount of Rs.7,35,240/- towards nine times penalty is illegal.

The adjudication of the present case involves verification of facts as to the nature of material drawn by the petitioner. The petitioner already allowed deduction of Rs.72,000/- for the material drawn from the borrow pits, but the present demand is made on the report of the Regional Vigilance and Enforcement Officer. In view of the same, this Court is not inclined to entertain the present writ petition as there is a provision for appeal against the present order.

Accordingly, the writ petition is disposed of giving liberty to the petitioner to file an appeal before the competent authority within a period of three months from the date of receipt of a copy of this order and the amount already paid by the petitioner would be subject to the further orders that may be passed in the appeal. In the meanwhile, the petitioner shall not be pressurised to comply with the demand made under proceedings dated 17.07.2008. If the petitioner fails to file the appeal as aforesaid, it is open to the 3rd respondent to enforce the demand notice dated 17.07.2008. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall

stand closed.

_____

A.RAMALINGESWARA RAO, J

DATE 26.04.2016
kvrm