

**HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No. 844 of 2010**

Date: 18.06.2016

**Between:**

M/s. Vaarija Associates,  
Rep by its Partner,  
Sri S G S Murthy R/o H No. 3-6-462  
Himayathnagar, Hyderabad

Petitioner

And

Government of A.P.,  
Rep by its Deputy Director of Mines and Geology,  
BRKR Buildings, Near Tank Bund, Hyderabad  
And others

.....Respondents

The Court made the following:

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**ORDER:**

Petitioner entered into agreement for development of residential building consisting 18 apartments at Dilsukhnagar, Hyderabad. The Regional Vigilance and Enforcement Officer, Hyderabad City-II, Hyderabad issued notice dated 19.12.2007 directing to produce certain documents and information with regard to the development activity undertaken in the

scheduled premises. In response to the same, petitioner has submitted letter dated 4.4.2008 relying on all relevant documents in proof of purchase of the construction material from the contractors and produced relevant bills. On 5.2.2009 a show cause notice was issued alleging that petitioner has violated Rule 26 (3) (ii) of A.P. Minor Mineral Concession Rules, 1966 (for short the Rules) and liable to pay a penalty of Rs.2,19,186/-. Petitioner submitted explanation denying the allegation and requested to refer to its earlier letter dated 4.4.2008. Rejecting the explanation submitted by petitioner, demand notice dated 31.3.2009 was issued. Aggrieved thereby, this writ petition is filed.

2. Though the WVMP No. 2360 of 2016 is listed today, having regard to nature of controversy, the writ petition is disposed of finally. Heard Ms.Priyanka Singh, learned counsel appearing for petitioner and learned Government Pleader for Industries and Commerce (TS).

3. Learned counsel for petitioner submits that petitioner purchased the relevant material from the contractors who have authorization to extract/manufacture the concerned material and in proof of such purchase, petitioner has also produced bills. In the explanation filed by the petitioner also same was highlighted. However, ignoring the explanation filed and the justification shown by the petitioner, impugned order is passed. Learned counsel for petitioner further contends that demand notice under challenge is liable to be set aside as it is not a speaking order and no reasons are assigned for rejection of explanation submitted by the petitioner. The penalty levied on the petitioner on the illegal ground and without any justification.

4. Learned Government Pleader placed reliance on the decision of this Court in W.P. No. 14919 of 2008 dated 15.2.2016 to contend that petitioner has not availed the remedy of appeal before invoking the jurisdiction of this Court and writ petition has to be dismissed on this ground alone.

5. A plain reading of the demand notice dated 31.3.2009 would disclose that it refers to explanation filed by the petitioner and it only says that explanation is not satisfactory, it does not assign any reasons, more so, when the demand mulct the petitioner with financial liability, the authority ought to have assigned reasons for rejection of explanation filed by the petitioner. Thus, on this sole ground the order impugned is liable to be set

aside.

6. Even in the counter affidavit, no proper justification is shown. In this context, it is useful to extract the statement made by the respondent in the counter affidavit, which reads as under:

“..... However, as verified from the letter addressed to the Regional Vigilance & Enforcement Officer, Hyderabad, City –II, the petitioner has submitted (65) enclosures including other documents municipal plan, brick registration certificate etc. Thus, the statement of the petitioner is contradictory pertains to producing of the bills. The documentary evidence towards payment of seigniorage fee was considered by the Regional Vigilance & Enforcement Officer, Hyderabad, City II and accordingly only differential quantities of minor minerals were proposed for action under Rule 26 (3) (ii) of Telangana Minor Minerals Concession Rules, 1966 and realization of normal seigniorage fee in addition to (5) times penalty.”

7. As seen from the explanation submitted by the petitioner, relevant documents in support of the claim of the petitioner that the material was sourced from the authorized contractor /manufacturer is not disputed. If petitioner secured excess material in addition to the material sourced from the authorized contractor/manufacturer, petitioner ought to have been informed accordingly and explanation ought to have been called from him. Reading of the impugned order and counter affidavit filed would show that no such allegation was leveled on the petitioner. In the absence of the same, it cannot be said that the material enclosed to the explanation filed by the petitioner on 4.4.2008 was objectively considered.

8. Perusal of the order in W.P. No. 14919 of 2008 would show that even before final demand notice was issued and without availing the remedy as available in law, on a communication sent to the Tahsildar to ascertain the assets of the petitioner, writ petition was instituted and this Court dismissed the writ petition leaving it open to the petitioner to challenge the proceedings of the first respondent therein as and when first respondent would take further action after the communication is received from the Tahsildar, Ghatkesar. The facts in issue in this case are not similar to the facts of the said case. Here, petitioner challenges the demand notice made after consideration of the explanation filed by the petitioner. Further more, as noticed above, the order under challenge is ex-facie illegal as it does not assign any reasons in support of the decision. Therefore, decision of this Court in W P No. 14919 of

9. For the reasons aforesaid, the order under challenge is liable to be set aside and accordingly writ petition is allowed. Miscellaneous petitions, if any, stand disposed of. No costs.

Date: 18.7.2016  
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**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE  
AND  
HON'BLE SRI JUSTICE P.NAVEEN RAO**

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