

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**Writ Petition No. 28223 of 2011**

**Order:**

The petitioner is an applicant for grant of quarry lease in an extent of 10.00 Hectares in un-surveyed area of Surjani village, Meliaputti Mandal, Srikakulam District, by virtue of application dated 30.06.2005. He submitted the said application to the second respondent through the fifth respondent as required under the Rules. Thereafter, the petitioner was invited for inspection, survey and demarcation of the applied area on 05.09.2008, vide letter No.1487/Q/05, dated 20.08.2008. The petitioner states that he attended for survey, inspection and demarcation of the area applied on 05.09.2008 as desired by the fifth respondent, but the inspection did not take place on that day for the reasons best known to the fifth respondent. Thereafter, no communication was received by the petitioner. When the petitioner came to know about the rejection of his application, he applied to the second respondent for issuance of copy of the order under Right to Information Act. Pursuant to the same, the copy of the order, dated 26.02.2009, passed by the second respondent was communicated to him on 17.06.2010. Challenging the order of the second respondent, the petitioner filed an appeal/revision before the first respondent on 19.06.2010. The first respondent rejected the appeal/revision, by an order dated 08.07.2011. Challenging which, the petitioner filed the present Writ Petition.

2. A perusal of the impugned proceedings of the first respondent show that the appeal was rejected mainly on the ground that it was barred by time as it was filed after one year. The main ground that should have been considered by the appellate authority is with regard to communication of the order of the second respondent which was admittedly communicated to the petitioner pursuant to the application under Right to Information Act on 17.06.2010, though the order was

passed on 26.02.2009. The second respondent passed the order on 26.02.2009 on the ground that the applicant failed to attend the survey and inspection in spite of the intimation given by the Assistant Director of Mines and Geology on 11.09.2008. It appears that the second respondent issued a show cause notice before rejecting the application, but the said show cause notice could not be served due to insufficient address. The second respondent came to the conclusion that the applicant was responsible for furnishing insufficient address. After narrating the sequence of events, the first respondent rejected the appeal with the following observations.

“Through the reference 6<sup>th</sup> cited, the Director of Mines and Geology, Hyderabad stated that, the rejection orders was passed on 26.02.2009. Since the show cause notice was returned by the postal department with an endorsement “insufficient address” and the rejection orders was personally served by the Assistant Director of Mines and Geology, Tekkali on 25.02.2010, and the Revision Application was filed by 19.06.2010, received by the Government on 22.06.2010. Hence the petitioner not filed the revision within the time of 90 days as required under Rule 35A of Andhra Pradesh Minor Mineral Concession Rules 1966.

In order to dispose of the Revision application a personal hearing was conducted on 18.08.2010 and the Revision Authority reviewed the case. The Revisional Authority after taking the material made available into consideration in general and remarks of the Director of Mines and Geology, into consideration, hereby reject the request of the petitioner, as there are no valid grounds and the fact that he has not filed the Revision Application within stipulated time and thus it is time barred by one year. Accordingly the Revision Application is disposed of under Rule 35-A of APMMC Rules, 1966.”

3. The impugned order of rejection of appeal/revision shows that the order of rejection passed by the second respondent was served by the Assistant Director of Mines and Geology, Tekkali on 25.02.2010 and the revision application was filed on 19.06.2010. If the Assistant

Director of Mines and Geology, Tekkali, served the order of rejection personally on 25.02.2010, there is no need for the petitioner to obtain the said order under the Right to Information Act. In the said circumstances, this Court called for the record and allowed the petitioner to peruse the same.

4. Learned counsel for the petitioner submits that there is no proof of communication of the order dated 26.02.2009 to the petitioner and the address furnished by the petitioner is correct. Learned counsel for the petitioner has produced before this Court the other communications received by the petitioner to the same address from third parties.

5. When the second respondent could not communicate the show cause notice by post, he should have made attempts to communicate the show cause notice by other means, but such effort was not made and the application of the petitioner was rejected without hearing him. In view of non-service of notice and the petitioner could not file the appeal/revision before the first respondent within time, the revision was dismissed on the ground of limitation.

6. This Court, while admitting the Writ Petition on 18.10.2011, held that any grant of quarry over the site applied for by the petitioner will abide by the result in this Writ Petition and the respondents shall communicate the same to all concerned.

7. When this Writ Petition is taken up for consideration, learned Government Pleader for Mines and Geology submitted that the quarry lease was not granted to anyone.

8. In the circumstances, this Writ Petition is allowed by setting aside the orders of the first respondent, dated 08.07.2011, in confirming the orders of the second respondent, dated 26.02.2009, without expressing any opinion on the merits of the case and

remanding the case to the second respondent for consideration of the case of the petitioner afresh in accordance with law after hearing the petitioner and pass appropriate orders thereon within a period of three (3) months from the date of receipt of a copy of this order. However, in the circumstances, no costs.

9. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.  
Date: 22.03.2016  
Nsr

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**RAMALINGESWARA RAO, J.**