

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 16143 of 2016

ORDER:

The present Writ Petition came to be filed seeking issuance of a Writ of Certiorari or any order or direction to quash the proceedings of the 3rd respondent dated 21.03.2016 in No.4823/M5/2015.

2. The facts in issue disclose that the petitioner herein is a registered firm doing Mining of Silica Sand and the petitioner was granted mining lease for Silica Sand over an extent of 512 acres in Sy.Nos.695/22 and 696 of Momidi village, Chillakur Mandal, Nellore District. The lease was being renewed from time to time. On 05.11.2015 a show-cause notice was issued by the 3rd respondent stating that the petitioner herein has excavated and transported 16,048 mts. of Silica Sand from other than the leased area and as such he is liable to pay amount for transportation of excess quantity of Silica Sand. The Regional Vigilance and Enforcement Officer has estimated the value of excavated silica sand on the basis of average sale values published by IBM at Rs.55,28,293/-, to be recovered from the petitioner. Immediately after receipt of the notice, the petitioner herein gave a reply requesting the authorities to furnish a copy of report, relied upon by the respondent, so as to make a detailed explanation. On 30.01.2016, the 3rd respondent furnished a copy of the report of the Regional Vigilance and Enforcement Officer. On 18.02.2016 the petitioner made another representation to the 3rd respondent requesting him to supply copies of the Annexures referred to in the report, more particularly Annexures 5, 6, and 7 for making an effective explanation. Thereafter, the impugned order came to be passed directing the petitioner to pay an amount of Rs.55,28,293/-. Challenging the same, the present Writ Petition came to be filed stating that any order passed without furnishing the documents, which were relied upon, is violative of principles of natural justice.

3. The learned counsel for the petitioner mainly contended that though he made a representation to the Authorities for furnishing the Annexures relied upon in the report, no documents are furnished till date and as such he could not

make an effective explanation before the 3rd respondent.

4. On the other hand, the learned Government Pleader for Mines and Geology filed a counter opposing the same. According to her, the 3rd respondent addressed a letter bearing No.4823/M5/2015 dated 29.02.2016 to the petitioner informing that the Annexures 5, 6 and 7 connected to the reports of Regional Vigilance and Enforcement Officer, Nellore are available at the office of the Assistant Director of Mines and Geology, Nellore and requested the petitioner to get the said information from the said place. It is stated that the said letter was dispatched on 29.02.2016 itself, to the same address with which the earlier communication was made, but for the reasons best known the petitioner failed to give any reply to the said letter.

5. It may be true that the 3rd respondent has written a letter to the petitioner but at the same time it is to be noted that the said letter was not sent by registered post with acknowledgment due, which fact is admitted by the respondent. That being the position, it cannot be presumed that the petitioner has received the letter dated 29.02.2016 informing him to collect the Annexures from the office of Director of Mines and Geology. In fact the impugned order does not anywhere referred to the said letter. That being the position, the argument of the learned counsel for the petitioner that his client is put to great prejudice as he could not make an effective explanation, in the absence of relevant material, cannot be brushed aside, thereby violating the principles of natural justice.

6. Accordingly, the order under challenge i.e., Demand Notice No.4823/M5/2015 dated 21.03.2016 is set-aside and the petitioner shall make a representation basing on the Annexures 5, 6 and 7, which are received by the counsel for the petitioner, in Court today from the Government Pleader (as per his request), within two weeks from today, in which event the 3rd respondent shall pass orders in accordance with law.

7. With the above observation the Writ Petition is disposed of. No order as to costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt: 09.06.2016

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