

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM

WRIT PETITION No.11343 OF 2017

ORDER:

The writ petition is filed challenging the notice dated 18.03.2017, issued by the 4th respondent-Assistant Director of Mines & Geology, calling upon the petitioner to submit the explanation within a period of fifteen days from the date of receipt of the notice.

It is the case of the petitioner that he is a special class contractor and is executing Four Lane road between Kadapa - Kurnool Section of National High Way No.18 as a E.P.C Contractor to M/s.Rayalaseema Express Way Private Limited. On earlier occasion, by proceedings dated 04.01.2017, issued by the 4th respondent - Assistant Director of Mines and Geology, Banaganapalli, petitioner was demanded to pay a sum of Rs.39,42,83,177/- towards normal seigniorage fees of Rs.8,24,53,260/- along with penalty of Rs.31,18,29,887/-. Petitioner came to challenge the same by filing W.P.No.3259 of 2017 and this Court after hearing the petitioner and considering the specific allegations of the petitioner that no notice and no enquiry was made before making a demand directed the respondent authorities to file a specific affidavit as to whether any notice was issued to the petitioner before making such demand.

It is the contention of the learned counsel for the petitioner that the respondent authorities having realized that they had made a false statement before this Court that a notice was issued to the petitioner and was withdrawn, issued the impugned notice with a predetermined mind to make the demand of huge money from the petitioner and the same is violative of the instructions issued by the 2nd respondent - Director of Mines and Geology in Circular Memo No.19718/Vg2/2000 dated 19.07.2002. It is the further contention of the learned counsel for the

petitioner that in terms of the above said circular memo before initiating the proceedings by the 4th respondent Assistant Director, the 4th respondent - Assistant Director, is required to verify the information submitted by the Vigilance and Enforcement Department and only after satisfying the correctness of the allegations made, notice shall be issued to the parties. Except reiterating verbatim from the earlier order dated 04.01.2017, the present notice does not set out the allegations which the petitioner is required to meet. In those circumstances, in terms of the law laid down by the Supreme Court in **Food Corporation of India vs. State of Punjab and others**¹, **Oryx Fisheries Private Limited vs. Union of India and others**² and **SBQ Steels Limited, Chennai vs. Commissioner of Customs, Central Excise and service Tax, Guntur**³, the impugned show cause notice is liable to be set aside as arbitrary and illegal.

Learned Government Pleader for the respondents while opposing the writ petition submits that the petitioner instead of submitting his explanation to the impugned notice which was issued in terms of the regulations of A.P. Minor Mineral Concession Rules, 1966 (for short, “the Rules”), has rushed to this Court prematurely. Learned Government Pleader further submits that the petitioner may be directed to submit the explanation to the impugned notice which shall be considered by the respondent authorities in accordance with its own merits.

Having considered the pervasive arguments of the learned counsel for the petitioner this Court is of the opinion that the judgments relied upon by him in any way do not support the case of the petitioner. In the judgment reported in **Food Corporation of India** (1 supra) in para 12, on which reliance is placed, the observations therein are in relation to a vague and unspecific notice. In the present case, the respondents had

¹ (2001)1 SCC 291

² (2010) 13 SCC 427

³ 2013 (1) ALT 3 (DB)

categorically set out their allegations that the petitioner had executed the work for M/s. Rayalaseema Express Way Private Limited between the period from 21.02.2013 to 15.05.2016 and that the Vigilance and Enforcement officials have gathered the information that the petitioner had used Gravel, Road Metal, Dust and Ordinary Sand (minor minerals) in execution of the works and for utilization of various quantities, there was no seigniorage fee paid. It is further stated that the information was sought from M/s. Rayalaseema Express Way Private Limited, however, though the said Express Way Private Limited sought one month time, no information was furnished by them, so far. In those circumstances, based on the material available on record, respondents have arrived at the tentative quantities and the amount of seigniorage fees which has escaped payment and thus in view of the Rules of the A.P Minor Minerals and Concession Rules, the total amount of Rs.31,18,29,887/- is liable to be paid. What all the above details indicate that there is no application of mind on the part of the respondent authorities and it cannot be said that the notice issued is vague. In that view of the matter, the judgments of the Supreme Court cited by the learned counsel for the petitioner have no application. Like wise the judgment of the Supreme Court reported in **Oryx Fisheries Private Limited** (2 supra) particularly para No.31 and a judgment of the Division Bench of this Court in **SBQ Steels Limited** (3 supra) also have no relevance. In the present case, the respondents have specified the qualities of mineral which were alleged to have been used by the petitioner and by applying the relevant rule, had made a demand of the seigniorage fees and the applicable penalties. As the petitioner was given the opportunity to rebut the allegations, it cannot be said that the impugned notice is only an empty formality merely on earlier occasion a demand was made on the petitioner without issuing any notice and

without enquiry. The aspect as to whether the petitioner utilized a particular quantities of minor minerals is a question of fact which can be determined in an enquiry based on the work executed/work being executed.

In those circumstances of the case, there are no merits in the writ petition and accordingly, the writ petition is liable to be dismissed. However, it is made clear that the observations made in this order with respect to various factual aspects are limited only for the disposal of the writ petition and they shall not be considered that this Court expressing any opinion on merits of the factual aspects and the petitioner is at liberty to submit his explanation, which shall be considered by the respondent authorities in accordance with the law.

Accordingly, with the above observations, the writ petition is dismissed. No order as to costs.

As a sequel to disposal of the writ petition, WP.M.Ps if any pending shall stand disposed of as infructuous.

Date:31.03.2017.
Gk.

CHALL KODANDA RAM,J

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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