

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.41963 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“... to issue a writ, order or direction, more particularly one in the nature of Writ of MANDAMUS, declaring the action of the 2nd respondent - DMG in D. Dis. Proc.No.7082/R5-1/2014, dt.23-03-2017 determining the mining lease held by petitioner and action of the 1st respondent in Lr.No.7384/M.I(1)/2017-2, dt.03-11-2017 in rejecting and returning the Revision/ Appeal dt.29-06-2017 filed by Petitioner as arbitrary, illegal, unjust, unconstitutional, in utter violation of principles of natural justice and contrary to Rule 35-A of APMMC Rules, 1966 R/W MM(D&R) Act, 1957 and pass such other order or orders as the Hon'ble Court deems fit and proper in the interest of justice.”

2. I have heard the submissions of the learned counsel for petitioner and of the learned Assistant Government Pleader for Mines and Geology appearing for respondent Nos.2 and 3. I have perused the material record.

3. The facts which are discernable from the submissions of both sides and the material record, in brief, are as follows:

“By an order in D.Dis.Prod.No.7082/R5-1/2014, dated 23.03.2017, the Director of Mines and Geology, Ibrahimpatnam, held that the quarry lease for Quartz over an extent of 35.101 Hectares in Survey No.2117 of Talupula Village, Piler Mandal, Chittoor District, held by the petitioner is determined under Rule 12 (5)(h)(xii) of A.P. Minor Mineral Concession Rules, 1966, (‘the Rules’, for brevity), and that the security deposit paid by the lessee

is forfeited to the Government; and, directed the Assistant Director of Mines and Geology, Palamaner, to take further necessary action in the matter. Aggrieved thereof, the petitioner preferred a revision application before the revisional authority i.e., the Deputy Secretary to the Government, Industries and Commerce, (Mines.I) Department. The said revision was disposed of by the impugned Letter No.7384/M.I(1)/2017-2, dated 03.11.2017. Aggrieved thereof, the present Writ Petition is filed.

4. Learned counsel for the petitioner submits that no opportunity of hearing, as contemplated under the proviso to Rule 35-A of the Rules was provided to the petitioner before disposing of the revision; that the revision petition was not disposed of by passing an order as contemplated under law; that the disposal of the revision is communicated by way of a letter; and, that the said letter with its contents by no stretch of imagination can be considered as an order passed in the revision; and therefore, the order, which is in the form of a letter and which is contrary to the established norms and practice, is liable to be set aside and that the matter requires to be remitted to the revisional authority for disposal afresh in accordance with the procedure established by law.

5. She would further submit that in matters of this nature, the revisional authority is expected to pass an order in the form of a Memo as was consistently being done in other cases; that the revision shall be disposed of by passing a speaking order after referring to the grounds of revision and answering all the contentions raised in the grounds of revision, however, after

affording to the petitioner an opportunity of being heard not only as per Rules but also as required under the principles of natural justice.

6. Learned Assistant Government Pleader appearing for respondent Nos.2 and 3 forcefully tried to support the impugned order/letter by *inter alia* stating as follows: ‘The order, which is impugned in the revision before the revisional authority, on a perusal, reflects that it is an order on merits and that such an order passed on merits by the primary authority was confirmed in the revision by the revisional authority by passing the impugned order on merits, though the same is in the form of a letter. The record discloses that when there was change of address of the petitioner, the same was not communicated to the authorities as required under the Rules. Therefore, there is no possibility to communicate the date of hearing to the petitioner. Hence, for the said lapse of the petitioner, he cannot blame the revisional authority for not issuing a notice of hearing before disposing of the revision. She brings to the notice of the Court Rule 12 (5) (h) (vii) of the Rules, which deals with Lapsing of Licence or Lease and the proviso therefor which reflect that the licensee or lessee is required to submit an application to the Director within one month from the date of receipt of the order as contemplated under Rule 12 (5) (h) (vii) of the Rules and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of prospecting or quarrying operations or discontinuance thereof, the Director may recommend to the Government for revival of the licence or lease.’

7. Be that as it may. This Court is now not going into the merits of the matter. This Court is only examining the sustainability of the order impugned on the contentions raised on behalf of the petitioner. It is not in dispute that the impugned order/letter does not disclose that an opportunity of hearing is provided to the petitioner before the impugned letter rejecting the revision petition and returning the revision application in original is communicated to the petitioner. Further, as rightly pointed out, the disposal of the revision by way of a letter and communicating the decision in the form of a letter, that too, without affording an opportunity of being heard, is not in accordance with the law and the principles of natural justice, in the considered view of this Court. Therefore, this Court finds that the contentions of the writ petitioner merit consideration.

8. On the above analysis, the impugned order/Letter No.7384/M.I(1)/2017-2, dated 03.11.2017, is set aside and the revision/matter is accordingly remitted to the Government for disposal in strict accordance with the procedure established by law, however, after affording an opportunity of being heard to the petitioner. The revision, as directed supra, shall be disposed of as expeditiously as possible, preferably within a period of three weeks from the date of receipt of a copy of this order. Till the said exercise, as directed, is completed, the respondents are directed to maintain *status quo*.

9. Accordingly, the Writ Petition is allowed.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

December 13, 2017
MD

