

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1138 OF 2018

ORDER :

Petitioner has filed this Writ Petition assailing the order dt.30.05.2017 passed by the 1st respondent under Section 35(A) of the A.P. Minor Minerals Concession Rules, 1966 (for short 'the Act') imposing normal seigniorage fee and one time penalty for the mineral transported within the leased area, and normal seigniorage fee along with three times penalty for the mineral extracted out side the leased area.

2. Counsel for petitioner contends that the petitioner had engaged a counsel and filed the revision before the 1st respondent through the said counsel on 15.03.2015, that no notice of hearing of the Revision was served on the counsel, but the petitioner received a call on 31.03.2017 that the matter would be heard on 01.04.2017 at 11.00 a.m., that the petitioner could not contact his counsel and he approached the 1st respondent on 01.04.2017 and sought for time, that he was informed that he would be given a notice intimating the next date of hearing, but without issuing any further notice, the impugned order was passed on 30.05.2017 disposing of the Revision without hearing the petitioner.

3. It is contended that the said procedure adopted by the 1st respondent is in violation of proviso to Section 35(A) of the Act, which mandates that no adverse order would be passed without

giving the petitioner an opportunity of making submissions in the Revision.

4. In the counter affidavit filed by the respondents it is merely stated that the petitioner participated in the hearing in-person and argued the case on merits. It is also denied that petitioner sought any time. The allegations leveled by the counsel for petitioner are denied.

5. It is not in dispute that proviso to Section 35(A) requires hearing to be provided to the revision petitioner before the Revision is decided.

6. Admittedly, the revision was filed by the petitioner through a counsel. Notice of hearing of the revision on 01.04.2017 ought to have been served by the 1st respondent on the counsel for petitioner, so as to, reach him before 01.04.2017. No material is filed by the Government Pleader for Industries to show that the notice of hearing of the revision on 01.04.2017 was served on the counsel for petitioner before that date.

7. Having engaged a counsel in the revision, it is difficult to believe that the petitioner would appear in-person and argue the revision on merits on 01.04.2017. This is against all normal course of human conduct.

8. Therefore, this probablises the contention of the petitioner that without serving any notice of hearing, the petitioner was informed on telephone about the hearing on 01.04.2017 on

31.03.2017, and because he could not contact his counsel, he was forced to appear in-person and plead time. In this view of the matter, the impugned order cannot be sustained since there is violation of the proviso to Section 35(A) referred to above.

9. Therefore, the impugned order is set aside; the matter is remitted back to the 1st respondent to pass a fresh order after hearing the petitioner/his counsel after serving a notice of hearing on the petitioner's counsel sufficiently before time, so that petitioner's counsel can appear and argue the matter before the 1st respondent. Any violation of this procedure will be viewed seriously by this Court. If after service of such notice, petitioner's counsel does not appear, it is open to the 1st respondent to pass an order on merits, *ex parte*. This exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this order.

10. The Writ Petition is disposed of accordingly. No order as to costs.

11. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

27th March, 2018.

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