

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.19809 of 2018

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Mines and Geology, apart from perusing the material available before the Court.

According to the petitioner, in the year 2001, mining lease for quarry over an extent of 35.101 Hectares in Sy.No.2117 of Talupural village, Piler mandal, Chittoor District was granted in favour of Smt.Anam Reddy Udhika Priya and, pursuant to which, a lease deed was executed for a period of twenty years which would be valid till 28.05.2020. It is further stated that subsequently the said mining lease was transferred in favour of the petitioner herein vide G.O.Ms.No.40 Industries and Commerce Department, dated 24.04.2010.

The Director of Mines and Geology, vide D.Dis.Proc.No.7082/R5-1/2014, dated 23.03.2017, ordered determination of the said mining lease on the following grounds:

1. *Not paid mineral revenue arrears of Rs.1,84,432/-*
2. *The lease is not working since 2010.*
3. *Not submitted monthly & annual returns.*
4. *Not erected boundary pillars*
5. *Not submitted the scheme of mining.*

Assailing the said order of determination, petitioner herein filed a revision before the State Government, under Rule 35-A of the A.P.Minor Mineral Concession Rules, 1966, on 30.06.2017. Earlier, when the first respondent herein rejected the said revision, petitioner herein filed W.P.No.41963 of 2017. This Court, by way of an order, dated 13.12.2018, allowed the said Writ Petition, setting aside the order of the State Government, dated 03.11.2017, and remitted the revision to the State Government for fresh disposal in accordance with law.

After the said remand, ordered by this Court in the above mentioned Writ Petition, now the first respondent-State Government, vide Memo No.317/M.I(1)2018-2, dated 24.05.2018, rejected the revision, filed by the petitioner herein.

According to the learned counsel for the petitioner, the questioned order is highly illegal, arbitrary, unreasonable and violative of principles of natural justice besides being contrary to the provisions of Rule 35-A of the Rules. In elaboration, it is further submitted by the learned counsel that, without affording any reasonable opportunity of being heard to the petitioner herein, the first respondent-State Government passed the questioned order. It is further submitted that the petitioner herein received a phone call in the afternoon of 18.02.2018 when he was in Chennai and he was informed that the revision would

be taken on 19.02.2018 and, thereafter, he immediately rushed to Amaravathi from Chennai and requested time to engage an advocate. It is further stated in the writ affidavit that the revisional authority informed him that the revision would be heard on the next date of hearing, but to his surprise, the impugned order came to be passed by the first respondent. It is also the submission of the learned counsel that the impugned order is a non-speaking order and did not touch anyone of the contents of the revision filed by the petitioner herein.

Per contra, it is submitted by the learned Government Pleader that there is absolutely no illegality nor there exists any infirmity in the impugned order and, only after affording opportunity to the petitioner herein, the revisional authority passed the impugned order and, as such, there cannot be any complaint of either violation of the statutory rules or the principles of natural justice.

The information available before this Court, in clear and vivid terms, discloses that, when the mining lease was determined earlier by the second respondent, petitioner herein assailed the said action by way of filing W.P.No.41963 of 2017 and this Court, by way of an order, dated 13.12.2017, set aside the said order and remitted the matter to the first respondent for fresh consideration. In this context, it may be appropriate to

refer to paragraph Nos.7 and 8 of the said order, which read as under:

“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.

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”.

Now, in the present Writ Petition, as mentioned supra, it is the categorical case of the petitioner that, without giving any notice and without affording an opportunity of being heard to

the petitioner herein, the first respondent herein passed the impugned order.

Proviso to Rule 35-A of the Rules, in categorical and clear terms, mandates and imposes an obligation on the revisional authority to afford reasonable opportunity of making representation.

In the instant case, no notice was admittedly given to the petitioner hereby by the first respondent, intimating the date of hearing of the revision. On the other hand, telephonic information was given one day before the date of hearing. In the considered opinion of this Court the said opportunity, by any stretch of imagination, cannot be said to be a reasonable opportunity of being heard. When it is the categorical case of the petitioner herein that, on receipt of a phone call in the afternoon of 18.02.2018, the petitioner herein rushed to Amaravathi and requested, on 19.02.2018, to grant time to engage an advocate, in the considered opinion of this Court, the impugned action on the part of the respondent authorities is not only in contravention of the provisions of Rule 35-A of the Rules but also a flagrant violation of the principles of natural justice.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the orders of the State Government-first respondent

herein, issued vide Memo No.317/M1(1)/2018-2, dated 24.05.2018, and the revision, filed by the petitioner herein, stands restored to file for fresh consideration by the first respondent, strictly in accordance with law, after giving notice and after affording opportunity of being heard to the petitioner herein. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

29th June, 2018
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A.V.SESHA SAI,J

