

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

WRIT PETITION No.32560 OF 2018

ORDER :

Heard learned counsel for the petitioner and the learned Government Pleader for Mines & Geology.

The demand notice, bearing No.4124/1/2006, dated 24.08.2018, issued by the Assistant Director of Mines and Geology, Eluru-third respondent herein, demanding a sum of Rs.30,25,148/- towards normal seigniorage fee with a fine of Rs.1,41,17,355/-, totalling to Rs.1,71,42,503/-, is under challenge in the present Writ Petition.

The Assistant Director of Mines and Geology, Eluru-third respondent herein, vide letter No.2124/01/2006, dated 30.06.2018, issued a show cause notice, followed by an inspection, said to have been done by the authorities, alleging that the leaseholder-petitioner herein excavated and transported more than the permitted quantity of 40335.3 Cubic Meters of Road Metal from the quarry lease area. By way of the said show cause notice, third respondent herein directed the petitioner herein to submit an explanation. In response to the said show cause notice, on 12.07.2018, petitioner herein submitted an elaborate explanation, narrating various aspects. In the said

explanation, petitioner herein also requested the respondents to furnish copies of the annual assessment orders of the lease area, Rules relating to the revision of annual assessments, on the basis of best judgment assessment, and Rule relating to the limitation period to revise the past annual assessments, as per the A.P.Minor Mineral Concession Rules, 1966 (for brevity, 'the Rules'). After receipt of the said explanation, the Assistant Director of Mines and Geology, Eluru-third respondent herein issued a demand notice, bearing No. 4124/1/2006, dated 24.08.2018, directing the petitioner herein to pay the amount mentioned supra. This Writ Petition challenges the validity and legal sustainability of the said demand notice, dated 24.08.2018, issued by the third respondent herein.

According to the learned counsel for the petitioner, the impugned demand notice is highly arbitrary, illegal, unreasonable and violative of the principles of natural justice besides being opposed to the very spirit and object of the provisions of the Rules.

In elaboration, it is further submitted by the learned counsel for the petitioner that, though the petitioner herein submitted an elaborate reply to the show cause notice, the Assistant Director of Mines and Geology, Eluru-third respondent

herein did not consider the contents of the same and, had the contents of the explanation been considered by the third respondent, the order impugned would not have emanated.

On the other hand, it is submitted by the learned Government Pleader that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and, in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that, in view of the availability of alternative remedy of appeal, under Rule 35 of the Rules, the present Writ Petition, filed under Article 226 of the Constitution of India, is not maintainable.

A perusal of the material available before this Court, in clear and vivid terms, discloses that, in response to the show cause notice, issued by the third respondent herein, petitioner herein submitted an elaborate explanation on 12.07.2018, touching various aspects of the matter, and also made a request to furnish certain documents.

A perusal of the impugned demand notice shows that, except showing the show cause notice, as one of the references

in the impugned demand notice, the third respondent herein did not make any endeavour to consider the contents of the explanation offered by the petitioner herein. Having issued the show cause notice and having acknowledged the explanation, offered by the petitioner herein, there is absolutely no justification on the part of the third respondent, in not considering the contents of the explanation, submitted by the petitioner herein, which, in the considered opinion of this Court, is a flagrant violation of the principles of natural justice.

In view of the above, the impugned demand notice cannot be sustained and the contention of the learned Government Pleader that, in view of the availability of an alternative remedy of appeal, under Rule 35 of the Rules, Writ Petition is not maintainable in view of the violation of the principles of natural justice.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned demand notice, bearing No.4124/1/2006, dated 24.08.2018, issued by the Assistant Director of Mines and Geology, Eluru-third respondent herein. However, it is open for the third respondent herein to pass an order afresh after considering the explanation offered by the petitioner herein. There shall be no order as to costs.

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

11th September, 2018
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A.V.SESHA SAI, J

