

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

WRIT PETITION No.34031 of 2018

ORDER:

Heard learned Counsel for the petitioner and the learned Government Pleader for Mines and Geology.

2. The demand notice, bearing No.4556/Q2/CG/2011, dated 18.08.2018, issued by the Assistant Director of Mines & Geology, Anantapuram/R.3 herein demanding a sum of Rs.56,76,760/- towards the penalty amount of double sale value of the granite for the excavation and transportation of 167.79 Cbm., Colour Granite blocks from outside the leased area and missed block 116.048 cbm., is under challenge in the present Writ Petition.

3. The Assistant Director of Mines & Geology/R.3 herein issued a show cause notice bearing No.4556/Q2/C.G/2011, dated 17.02.2018, calling upon the petitioner to show cause as to why action should not be taken for the alleged violation of A.P.Minor Mineral Concession Rules, 1966 (hereinafter, referred to, as 'the Rules'), while alleging that the petitioner herein excavated and transported 167.79 Cbm., of colour granite in contravention of the said Rules. In response to the said show cause notice, the petitioner herein submitted an explanation on 10.03.2018 narrating various aspects. In the said explanation, the petitioner herein also stated that though the show cause notice refers to a survey, such survey was not conducted in the presence of the petitioner herein and no notice was issued for

holding such survey and inspection. After receipt of the said explanation, the Assistant Director of Mines & Geology/R.3 herein issued the impugned demand notice bearing No. 4556/Q2/CG/2011, dated 18.08.2018, directing to pay the penalty amount of double sale value of the granite for the excavation and transportation of 167.79 Cbm colour granite blocks from outside the leased area and missed blocks 116.048 cbm.

4. 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.

5. 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.

6. 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.

7. 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 10.03.2018, touching various aspects of the matter, and also made a request to furnish certain documents.

8. 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.

9. 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 cannot be sustained in view of the violation of the principles of natural justice.

10. For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned demand notice, bearing No.4556/Q2/CG/2011, dated 18.08.2018, 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.

25th September, 2018
smr

A.V.Sesha Sai, J

