

**THE HON'BLE SRI JUSTICE D.RAMESH**

**WRIT PETITION NO. 5197 of 2021**

**ORDER:**

This Writ Petition is filed declaring the action of the respondents more particularly the action of the 3<sup>rd</sup> respondent i.e., Assistant Director of Mines and Geology, Visakhapatnam in demanding the petitioner to pay an amount of Rs.1,30,59,678/- vide impugned demand notice No.419/Vg/2021, dated 17.02.2021, as illegal, arbitrary, without jurisdiction, without application of mind and violative of Articles 14 and 19 of the Constitution of India and apart from being violative of principles of natural justice and consequently set aside the impugned demand notice.

2. The petitioner company has entered into works contract agreement with M/s.SBEC Private Limited on 18.01.2020 for execution of works as mentioned in the agreement. Basing on the agreement, the petitioner has been executing the works entrusted to it as per the terms and conditions mentioned in the agreement. For execution of the works, the Government of Andhra Pradesh issued temporary permits in favour of M/s.SBEC Private Limited in exercise of the powers delegated under Rule 9 (ii) of A.P.Minor Mineral Concession Rules, 1966, for excavating 50001 cubic meters of gravel over an extent of 1.00 hectare in Sy.No.164/1, for excavating 48766 cubic meters of gravel over an extent of 1.00 hectare in Sy.No.164, for excavating 51195 cubic meters of gravel over an extent of 1.10 hectares in

Sy.No.165, for excavating 4635 cubic meters of gravel over an extent of 1.30 hectares in Sy.No.174/3, for excavating 51559 cubic meters of gravel over an extent of 1.10 hectares in Sy.No.165 situated at Nunaparthi Village, Atchuthapuram Mandal, Visakhapatnam District and for the quantity of 25000 M over an extent of 2.550 hectares in Sy.No.89 situated at Nadimpally Village, Atchuthapuram Mandal, Visakhapatnam District. The petitioner is excavating the mineral as per the agreement only but highhandedly the 3<sup>rd</sup> respondent issued demand notice on 17.02.2021 demanding an amount of Rs.1,30,59,678/- and directed the petitioner herein to remit the penalty along with seigniorage fee amounts and the demand notice also specifies the necessary action would be initiated under the provisions of A.P.M.M.C.Rules, 1966 and to recover Mineral Revenue dues under Revenue Recovery Act, 1894, on the failure of the demand. The said demand notice was issued basing on the reports submitted by the 4<sup>th</sup> respondent. According to the statement of the 4<sup>th</sup> respondent, they have conducted a raid on 13.02.2021 along with staff and seized the vehicles of the petitioner and reported the same to the office of the 3<sup>rd</sup> respondent. The technical staff of the 3<sup>rd</sup> respondent came for inspection after a delay of two days and had taken the pit measurements on 15.02.2021 and issued the demand notice for illegal excavation against the petitioner. The learned counsel appearing on behalf of the petitioner has categorically stated that the petitioner is only executing the work as per the agreement entered with M/s.SBEC Private Limited and no mining

permits in the name of the petitioner and in view of the same, the provisions of the Act are not applicable to the petitioner. The respondent authorities have not issued any show cause notice or any opportunity to the petitioner before issuing demand notice and the demand notice is issued only on the basis of the 4<sup>th</sup> respondent is no way concerned with the mining activities. The demand notice is violation of the principles of natural justice.

3. The learned Government Pleader appearing on behalf of the respondents have stated that without going into the merits of the case, the case may be remitted back to the competent authorities and after due notice to the persons and hearing of them, the orders will be passed by the authorities.

4. Considering the above submissions, on perusal of the impugned demand notice clearly clarifies that before issuing the demand notice the authorities have not given any opportunity to the petitioner to explain their case. Even according to the reference, it clearly indicates that the demand notice issued basing on the letter of the Tahsildar, dated 13.02.2021 as well as the inspection and survey, dated 15.02.2021 by the office of the technical staff of the 3<sup>rd</sup> respondent.

5. In view of the above, the impugned orders, dated 17.02.2021, are set aside and remitting back to the 3<sup>rd</sup> respondent and directed to issue notice to the petitioner as well as concerned persons and after getting explanation, the authorities may pass appropriate orders as per the rules.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

**JUSTICE D.RAMESH**

Date : 04.03.2021

SPP

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