ANDHRA PRADESH HIGH COURT

Nukala Seeta Ramaiah

Vs

State of Andhra Pradesh

(P Chandra Reddy, C.J Reddy, J.)

13.11.1961

JUDGMENT

Chandra Reddy, C.J.

1. The petitioners seek the issuance of a writ of Certiorari to call for all the connected records from the offices of respondents 1 and 2 and quash the order, G.O. Ms. No. 778 dated 27-5-1961 and to direct the first respondent to call for tenders as stated by them in the counter affidavit filed in W.P. No. 31 of 1961.

2. The petitioners, along with several others, applied for mining tease in respect of Ac. 140-18 guntas in S. Nos. 286, 324 and 374, situated in the village of Appanarasimhapuram, hamlet of Cheruvumadhavaram Village, Khammam District, containing large deposits of iron ore in or about the year 1955.

3. The third respondent made a similar application two years earlier. Whether this application was pending at the material time is drawn into controversy and we will deal with it in the appropriate context.

4. Complaining that the 3rd respondent's application for the issue of a prospecting licence was not disposed of, though it was made as early as September, 1953, he filed W.P. Nos. 880 to 883 and 888 of 1957 for the issue of a Writ of Mandamus for a direction to dispose of his application. This was opposed by the 1st respondent on the ground that since it was not disposed of within nine months, it must be deemed to have been rejected. This objection did not weigh with our learned brother, Basi Reddi J., who heard the petitions and by his order dated 4-11-1958 he directed the first respondent to dispose of the application for a prosepecting license.

5. While matters stood thus, the Government called for tenders for exploiting this mine along with others in the public sector. Only persons who had worked 75,000 tons of iron ore were eligible to submit the tenders under that notification. The validity of this notification was assailed in W. P. No. 31 of 1961 by Donepudi Venkataramaiah on the objection that such a condition violated Article 14 of the Constitution. The attitude taken by the Government in that writ petition was that though it was competent for the State Government to impose such a restriction, they undertook to call for fresh tenders without the condition of 75,000 tons minimum turnover.

Notwithstanding this assurance, the Government gave up the idea of calling for tenders and granted a mining lease to the third respondent on the assumption that he was entitled to priority by reason of his application having been made earlier than the petitioners. It is this order of the Government that is put in issue in this writ petition.

6. This order is attacked by the learned counsel for the petitioners mainly on these grounds. Even though mines are very rich with iron ore and that they could be very profitably worked in the public sector, the Government chose to grant the lease to the third respondent on the footing that his application was pending despite the fact that it was rejected to the extent it bore on the mines in Appanarasimhapuram in 1954 with a view to prefer the third respondent. The petitioners attribute mala fides and oblique motive to the first respondent in preferring the third respondent to the other applications. What is alleged in the affidavit filed in support of the petition is that the Government for some unaccountable reason had gone back on its decision to call for fresh tenders for raising iron ore and decided to revive applications of several years old for granting mining leases, that there was no reason to reverse the decision taken by them to call for tenders for extracting the iron ore on behalf of the Government, that it was not open to the Government to go behind the said assurance and adopt the procedure of granting a mining lease and that the sudden change in the attitude was only made with a view to accomodate the third respondent and the order passed was mala fide.

7. In the counter affidavit filed on behalf of the Government, these allegations are denied. It was stated inter alia that the area in question was not reserved for the exploitation in public sector, that the technical opinion in this regard was that the quantity of ore available in that area was not much and of good quality and that having regard to all those facts, the Government had finally decided to lease out the area to private miners for exploitation of the ore. It was also added that, however, while calling for tenders for working the mines in Grandrayi reserved forest area, this area, namely S. Nos. 324, 286 and 374 of Appanarasimhapuram village was also mentioned in the tenders pending a decision as to whether this area was to be reserved for public exploitation or not, that the area was not also contiguous to Gandrayi forest, that patta lands in Appanarasimhapuram were already granted on lease to private individuals and that moreover the area was only 140 acres. In the reply affidavit, it was reiterated that the ore obtainable from the mine in question was of a very good variety and that the present survey numbers were adjacent to Gandrayi area. The recital in the counter affidavit to the contrary was characterised as a 'daring lie'. It was added that the petitioners were willing to deposit a sum of one and half lakhs of rupees by way of income from the area in addition to the royalty. We may mention incidentally that in the course of the arguments, the counsel for the petitioners offered to pay six or seven lakhs of rupees, if the mine was leased out to them besides paying usual royalty.

8. It is argued by Sri Kuppuswamy, learned counsel for the petitioners, that there was really no justifiable basis for the first respondent to grant a mining lease in favour of one or the other of the applicants when the Government could have derived enormous profit by working these mines themselves. We need not pause here to consider whether these mines could be worked with advantage by Government through contractors. It is a matter of policy to be decided by the Government taking into account various factors. It is not for this Court to adjudge on the advisability of either course to be pursued by the Government. It is matter entirely for the Government to decide whether they should work the mines themselves or lease them out to any of the applicants in accordance with the Mineral Concession Rules, 1960 and the provisions of

the Mines and Minerals (Regulation and Development) Act (67 of 1957).

9. The next point presented by Sri Kuppuswamy is that the action of the Government in granting the mining lease to the third respondent is without jurisdiction, since his application for the lease as regards the extent of land situated in Appanarasimhapuram was dismissed. He formulates his arguments thus: Although the third respondent applied for a mining lease in regard to a large area covering about 900 acres, on 9-1-1954, he wrote a letter to the Director of the Department of Mines and Geology requesting him to grant him a mining lease only for 57 acres 25 guntas, which do not form pare of 140 acres 18 guntas, the subject matter of this enquiry. The Government granted him a lease only for 57 acres 25 guntas for a period of five years as requested by the third respondent as could be gathered from the correspondence that passed between the then Government of Madras and the third respondent. Some time later, he requested the Government to allot him the rest of the lands also on lease but this was rejected. Aggrieved by the decision of the then Government of Hyderabad, the third respondent carried the matter in revision to the Central Government, and the Central Government, after inviting the remarks of the Government of Hyderabad, dismissed the revision petition. The second branch of the argument is based on the letter of the Central Government addressed to the third respondent (a copy of which is on the file of the first respondent). That communication reads as follows:

> "I am directed to refer to your application dated the 8th December, 1955 on the above subject and to say that after careful consideration of the facts stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decisions of the Government of Hyderabad rejecting your application for grant of mining lease for iron ore in Appanarasimhapurarn and Raigudam villages, Khamma Dist. Your (3rd respondent's) application for revision is, therefore, rejected".

10. It thus transpires, says Sri Kuppuswamy that the application of the third respondent was no longer pending at the time the lease was granted to him and the State Government acted without jurisdiction in preferring him to the petitioners. There is no doubt some force in this contention. But we refrain from dealing with this controversy as we arc inclined to give effect to the objection as to the maintainability of these petitions.

11. At this stage, it is convenient to discuss the preliminary objection raised by the learned Advocate-General. It is maintained by him that the impugned order is only an administrative order, and, therefore, it is not subject to the writ jurisdiction of this Court. The learned. Advocate General submits that, in disposing of an application either "for prospecting licence or for a mining lease, the Government does not discharge any judicial or quasi-judicial functions but acts only in an administrative capacity and that being so the only proper remedy for the petitioners is to seek the issuance of writ of mandamus. In support of his contention, he drew our attention to the judgment of the Punjab High Court in Shivji Nathubhai v. Union of India, . It was ruled there that the matter of granting or refusing to grant a mining lease under the Mineral Concession Rules was purely an administrative matter, that the authorities concerned did not act in a quasi-judicial manner and that consequently no writ of certiorari could issue.

12. The correctness of this ruling is canvassed by Sri Kuppuswamy. He contends that the State

Government exercises quasi-judicial functions in this behalf in that it has to dispose of applications for grant of mining lease in the manner indicated in Rule 32 and other rules of the Mineral Concession Rules, 1949, and adduce reasons in support of its order preferring one applicant to another, that, at any rate, so far as the Revisional authority i.e., the Central Government, is concerned, it acts in a quasi-judicial capacity and that the view of the Punjab High Court that the State Government as also the Central Government in the exercise of its revisional jurisdiction under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, and Rule 54 of the Mineral Concession Rules 1960, perform administrative or ministerial acts is opposed to the principle enunciated by the Supreme Court in

Shivji Nathubai v. Union of India, . In our opinion, the Punjab High Court over looked the distinction between the State Government, the original authority for granting the lease,and the Central Government, the revisional authority in this behalf. There can be little doubt thatthe Central Government, while deciding an application under Rule 54 of the Mineral ConcessionRules, exercises quasi-judicial functions, as there isa lis as between the person to whom the lease wasgranted and the person who is aggrieved by therefusal of the lease and as such it is the duty of theauthority reviewing the matter to act judicially.Consequently, it is obligatory on the part of theCentral Government to afford reasonable opportunity to the other party in the review application to present his case.

13. But the matter stands on 2 different footing so far as the State Government is concerned. Neither the fact that it has to decide the applications for grant of leases in the manner required by Rule 32 of the Mineral Concession Rules 1949, nor the requirement to state reasons for preferring one applicant to another makes any difference to the discharge of its duties under the Mineral Concession Rules. We feel that in taking action under Rule 32 of the Mineral Concession Rules, the State Government does not perform the act in a quasi-judicial capacity. In deciding whether a body acts judicially or administratively, the definition of Alkin L.J. in Rex v. Electricity Commissioners, 1924-1 KB i71 may be relied upon, since that definition has been accepted as correct by the Supreme Court in number of rulings. The learned L.J. said:

> "Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

14.This definition was analysed by Das C.J., in Radheyshyam v. State of M.P., observed his Lordship:

> "It will be noticed that this definition insists on three requisites each of which must be

fulfilled in order that the act of the body may be quasi-judicial act, namely, that the body of persons (1) must have legal authority (2) to determine questions affecting the right of parties and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a Court or a quasi-judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, L. J."

15. Bearing in mind the tests pronounced by Atkin, L.J., and by the Supreme Court in AIR 1953 SC 107 at p. 116, if we examine the scheme of the Act and the rules, we do not find anything which necessitates the Stale Government to act judicially. It follows that a writ of certiorari is not available to the petitioners.

16. This takes us to the question whether a writ of mandamus would lie to direct the Government to consider afresh ail the applications in accordance with the relevant rules, excluding that of the third respondent which was no longer pending, as suggested by the counsel for the petitioners-He says that the existence of an application is a pre-requisite to the grant of a lease as per the Mineral Concession Rules. The State Government have no authority to give a lease to a person on the basis of an application which was disposed of several years before. Since the lease impugned was granted in violation of the statutory rules, the directions prayed for should issue. On the other hand the learned Advocate General urges that since there is another remedy which is an efficacious one in the shape of an application to the Central Government for review under Rule 54 of the Mineral Concession Rules and Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, the High Court will not issue a writ of mandamus.

17. On the question whether a writ of mandamus could be issued when there is an alternative and an adequate remedy, we have a judgment of this Court in Gopikisnen Agarwal v. Collector of Customs, . There, it was laid down that the existence of another adequate remedy would exclude the issuance of a writ of mandamus except when fundamental rights are infringed or when the constitutionality of an enactment was put in challenge and the questions that are sought to be debated in an application for mandamus could not be agitated before the appropriate statutory tribunal. This view finds support in the Judgment of the Supreme Court in *U.P. State v. Mohd. Nooh*[1], where Das, C. J., makes a distinction between certiorari and mandamus. His Lordship stated that there was no rule with regard to certiorari as there was with mandamus that it would lie only when there was no other equally effective remedy. It is thus well-established that when an alternative and effective remedy is available to an aggrieved party, a writ of mandamus will not issue. We are quite satisfied that the Mineral Concession Rules and Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957) furnish a complete machinery for working out the rights of the parties conferred under that Act and the Rules. So, the petitioners could not be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution.

18. Sri Kuppuswamy tries to get over this difficulty by arguing that the relief provided under Rule 54 in this behalf is an illusory one for the reason that it was with the concurrence of the Central Government that the State Government granted the lease in question to the third respondent. This objection is answered by the learned Advocate-General in this way. The Central

Government had given its approval to the State Government for giving the lease to the third respondent on the representation made by the latter that the application of the third respondent for a mining lease was pending and that his application being the earliest one, he was entitled to priority. But for this representation, the Central Government would not have accorded its approval to the action of the State Government. Therefore it could not be said that the Central Government had foreclosed its mind in this behalf. If the petitioners are able to satisfy the Central Government that the application of the third respondent was not alive on the date when the State Government considered the applications of several of the applicants including the petitioners, the Central Government will surely reverse the order of the State Government, proceeds the learned Advocate-General. We are in entire agreement with the argument ot the learned Advocate-General. It is now clear from the record that the Central Government was not aware of the fact that the applications of the third respondent for mining lease in regard to the area involved in this writ petition was rejected by the State Government in 1954 or 1955. Obviously, this was also not brought to the notice of the State Government. However, we have no doubt that the Central Government will go into this question afresh. The Central Government has not prejudged the issue and we have no doubt that it will examine anew the matter unfettered by its previous approval to the lease being granted to the third respondent.

19. There is also another reason why we could not adjudicate upon the rights of the parties in this behalf. From the material available to us, it appears that one V. Bhaskara Rao applied for a mining lease in respect of these lands as far back as 18-11-1954, nearly a year before the petitioners, sent in their applications. If that were so, normally, he will be entitled to preferential rights. He is not before us and we are told that he has invoked the jurisdiction of the Central Government under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 and Rule 54 of the Mineral Concession Rules. Similarly, the petitioners also have presented a petition for review of the order of the State Government. We think that these matters could be satisfactorily disposed of by the Central Government in its revisional jurisdiction.

20. For these reasons, we dismiss the writ petition but there will be no order as to costs.

21. This will not in any way prejudice the interests of the petitioners for the reason that the learned Advocate General has given an undertaking on behalf of the Government that they would not do anything further, pursuant to the order granting the mining lease to the third respondent till the disposal of the revision petitions by the Central Government.

Cases Referred.

1AIR 1958 SC 86