

ANDHRA PRADESH HIGH COURT

A. Kotaiah Naidu

Vs.

State of A.P

W.P. No. 322 of 1958

(Basi Reddy, J.)

04.11.1958

ORDER

Basi Reddy, J.

1. This is a petition under Article 226 of the Constitution for the issue of a writ of mandamus or any other appropriate writ, order or direction to the State of Andhra Pradesh, directing them to forbear from giving effect to G. O. M.S. No. 1617, Industries, dated 17th December, 1957, and published in the Andhra Pradesh Gazette dated 2nd January, 1958. The impugned notification bears the title, "Reservation of certain areas of Krishna District in Jaggayyapet Taluk, for public sector", and reads as follows :-

"In pursuance of the Industrial Policy Resolution of the Government of India, dated 30th April, 1956, and with the prior approval of the Government of India, the Governor of Andhra Pradesh, hereby declares that the areas, the details of which are given in Annexures-I and II to this notification, are with immediate effect reserved for exclusive exploitation of the State Government."

Annexure-I deals with the lands situated in the villages of Gandrayi, Takkellapadu and Ramachandrunipet.

2. The sum and substance of the petitioner's case is that in April, 1952, he applied to the State Government of the grant of prospecting licenses for iron ore in respect of an extent of about 1000 acres in the reserved forest area of Gandrayi, Takkellapadu and Ramachandrunipet villages of Jaggayipet Taluk, Krishna District, and without disposing of his application, the State Government had issued the impugned notification and thus deprived him of his chances of getting prospecting licenses in those areas.

3. The circumstances leading up to the issue of the above notification by the State Government may now be stated. With a view to give effect to the revised Industrial Policy Resolution of the Government of India of the 30th April, 1956, the State Government examined the question of

reservation of areas for public sector and came to the conclusion after investigation, that gypsum and iron ore might be taken up at present, and thereafter communicated their intention to the Government of India and sought their approval. The Government of India gave their approval in their letter No. M/II-159 (7)/56 dated 19th September, 1957 to the proposal of the State Government regarding reservation of iron ore-bearing areas in the State for exploitation by the State. The State Government thereupon issued the impugned G. O.

4. The contention on behalf of the State Government is that the lands in question belong to the State Government; that no individual has any manner of right either to the surface or to the minerals in those lands; that it is within the competence of the State Government to decide to explore the subsoil and work the mines themselves and refuse to grant any prospecting license or mining lease to any private person : that in those circumstances no question of invading any one's right to property or right to carry on business arises; and that the petitioner has no vested right to insist upon the Government granting him a prospecting license or a mining lease in the lands in question. The Government further state that here is no question of the interest of the petitioner being adversely affected by the non-issue of a prospecting license to him, as there is no legal obligation on the Government to grant a prospecting license or a mining lease in respect of any area, and as per R. 17 of the Mineral Concession Rules, 1949, the granting or refusing of a prospecting license is entirely within the discretion of the Government.

5. On behalf of the petitioner a variety of questions were mooted, some of which were wide of the mark; but the principal contentions of the learned advocate for the petitioner were two fold : (1) That the action taken by the State Government was through executive fiat and without legislative sanction and was therefore 'ultra vires' of the Constitution inasmuch as the source of the impugned notification was resolution of the Government of India and not a law enacted by Parliament; and (2) That the enactment governing the regulation of mines and the development of minerals, is the Mines and Minerals (Regulation and Development) Act, 1948, and the rules framed thereunder, viz., the Mineral Concession Rules, 1949; and neither the Act nor the Rules envisage the reservation of areas for the public sector to be exploited for minerals by the State, and therefore the action of the State is illegal.

6. In support of the first contention, it is argued that Article 73 of the Constitution defines and delimits the executive power of the Union, and that power is limited to the execution of laws enacted by parliament, and in the present case as there is no law empowering the State to reserve lands for the public sector, the resolution passed by the Government of India and the notification issued by the Governor of Andhra Pradesh pursuant thereto, are unconstitutional. In my opinion tin's argument proceeds on a misconception of the content of the executive power of the Union and ignores the provisions of Article 298 of the Constitution. Article 73 indicates the extent, of the executive power of the Union while Article 162 : deals with the executive power of a State; and Article 298 further extends the scope of the executive power of the Union and of each State and is in the following terms :-

"The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposing of property and the making of contracts for any purpose."

Article 297 lays down that all lands, minerals and other things of value underlying the ocean

within the territorial waters of India, shall vest in the Union and be held for the purposes of the Union.

7. The impugned notification in the present case was issued in pursuance of the Industrial Policy Resolution of the Government of India and with their prior approval, and therefore there is no constitutional inhibition in regard to the action taken by the State Government.

8. In *Ram Jawaya Kapur v. State of Punjab*¹, where by a series of executive orders, the Punjab Government had implemented their policy of nationalization of text-books, the Supreme Court had to consider the scope and extent of the executive power of the Union and of the States, and their Lordships repelled the contention that the State Government had no power to engage in any trade or business activity without the sanction of the Legislature. Dealing with that contention, Mulcherjee, C.J., observed as follows :-

"Neither of these Articles (Art. 73 and Article 162) contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State Executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the powers of the State Executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies under Article 73 of the Constitution."

The learned Judge went on to observe :-

"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away"

The executive power, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function, there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

In another portion of the judgment, the learned Judge observed :-

"The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of

¹1955 SCJ 504 : AIR 1955 SC 549

legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general

administration of the State."

To this list may be added the power to carry on trade or business as prescribed by the Article 298, which was amended in its present form by the Constitution (Seventh Amendment) Act, 1956.

9. There is thus no force in the contention of the learned advocate for the petitioner that the resolution passed by the Government of India, which was given effect to by the State Government, is bad for want of legislative sanction.

10. The second contention advanced by the learned advocate for the petitioner that the Mineral Concession Rules, 1949 do not authorize the State to undertake the exploitation of mineral resources, is also devoid of substance. Section 5 of the Mines and Minerals (Regulation and Development) Act empowers the Central Government to make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Rule 13 of the Mineral Concession Rules prohibits the grant of a prospecting license in respect of any mineral as the Central Government may, by order communicated to the State Government concerned, specify either throughout, or in such part of the State, as may be specified in the order. Rule 17 gives the State Government an absolute discretion in the matter of granting or refusing prospecting licenses. It follows that the petitioner has no right, fundamental or other, to a prospecting license; he cannot, therefore, question the right of the Central and State Governments to deal with mineral resources in the State in the manner they deem fit in the public interest; and Article 298 of the Constitution clothes the Union and State Governments with the power to carry on any trade or business.

11. There are thus no merits in this writ petition and it is dismissed with costs. Advocate's fee Rs. 100/-.

Petition dismissed.