
(2000) 01 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15705 of 1999

Andhra Cements Ltd.

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36

Constitution of India, 1950 — Article 226

Mineral Concession Rules, 1960 — Rule 12, 9

Mines and Minerals (Development and Regulation) Act, 1957 — Section 1, 10, 11, 12, 13

States Reorganisation Act, 1956 — Section 115(5)

Citation : AIR 2001 AP 62 : (2000) 1 ALD 388 : (2000) 1 ALT 266 : (2001) 1 APLJ 18

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s. Vedula Venkata Ramana and Vedula Srinivas, for the Appellant; Government Pleader, Mr. E. Manohar, for Mr. M.P. Chandra Mouli, for the Respondent

Judgement

1. The proceedings on the file of the first respondent contained in Memo Nos.699, 700, 702 and 705/M.II-2/99-2, dated 14-7-1999 rejecting the application of the petitioner for grant of prospecting licence for limestone over the areas in Kesvapalli, Alugumallipadu villages in Dachepalli Mandal, Sankarapuram village in Karampudi Mandal and Gogullapadu village in Gurajala Mandal of Guntur District, is impugned in this writ petition.

2. The petitioner prays for issuance of a writ of mandamus declaring the said proceedings void and also for consequential direction, directing respondent Nos.1 to 3 to grant prospecting licence of mining lease in respect of the said areas to the petitioner.

3. The petitioner is a public limited company engaged in the manufacture and sale of cement and other allied products. It claims to the tune of 3300 tonnes per

day i.e., 1.1. Million Tonnes per annum. It became sick some time in the year 1990. The Board for Industrial and Financial Reconstruction (for short "BIFR") provided rehabilitation package under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The petitioner claims to have revived production from December, 1994, as per the rehabilitation provided by the BIFR.

4. Be that as it may, the petitioner has applied for a prospecting licence in respect of limestone (major mineral) over an extent of 2011.77 acres in Kesavapalli and Alugumallipadu village in Dachepalli Mandal, Sankarapuram village in Karampudi Mandal and Gogulapadu village in Gurajala Mandal of Guntur District vide its application dated 19-10-1994, addressed to the first respondent. The petitioner is enjoying the mining lease in respect of certain other areas from which the petitioner is already extracting mineral. It is, however, stated that the petitioner has not been able to extract high grade limestone from the existing mining leases and in the circumstances, the petitioner is stated to be in search of high grade limestone mineral and accordingly certain investigations and searches were conducted by the petitioner and in that process found high grade limestone in the said villages and accordingly submitted its application dated 19-10-1994 before the first respondent-Government for granting prospecting licence. The prospecting licence application of the petitioner dated 19-10-1994 is a bunch of applications consisting of four individual applications.

5. The first respondent herein had issued a show-cause notice to the petitioner on 29-4-1999 requiring the petitioner to show-cause within fifteen days from the date of receipt of the said notice, as to why the application for grant of prospecting licence for limestone should not be rejected on the ground that the petitioner-company has already been recommended for five renewal of mining lease applications, three mining lease applications and one mining lease application was under process; altogether covering a total extent of 1108.79 acres (448.72 hectares). In the said show-cause notice, itself, the reserves contained in the said area are expected to be sufficient, even taking into consideration the proposed expansion to be made by the petitioner-company. It may be noticed that the first respondent issued in all four such show-cause notices in respect of the four applications filed by the petitioner. The contents of the show-cause notices are similar and the explanation submitted by the petitioner is also one and the same to all those show-cause notices. Therefore, each one of the show-cause notices and the explanation submitted by the petitioner thereto need not be referred to. The petitioner submitted a detailed explanation to the said show-cause notices on 17-5-1999, inter alia, stating that the petitioner is not having adequate limestone reserves covered by the existing mining leases and, therefore, there is no justifiable cause to reject the prospecting licence. The petitioner has detailed its requirements and about the insufficiency of the reserves of the limestone mineral to meet the expansion programme in accordance with the scheme formulated by the BIFR.

6. The first respondent after taking the explanation submitted by the petitioner into consideration has passed the impugned order in Memo Nos.699, 700, 702 and 705/ M.II-2/99-2, dated 14-7-1999, rejecting the applications of the petitioner for grant of prospecting licence. The said order is communicated to the petitioner on 19-7-1999. The order passed by the first respondent is self-explanatory. The reasons are recorded as to why the first respondent thought it fit to reject the application of the petitioner for grant of prospecting licence.

7. The first respondent in the impugned order states that:

1. That the petitioner-company has filed five applications for renewal of their existing leases in Nadikudi, Gamalapadu and Alugumallipadu villages, Guntur District covering an extent of 511.091 acres;

2. It had also submitted a mining plan for the area of 300.97 acres in Sy.No.611/18 of Gamalapadu village which has been recommended for renewal, as per the report prepared by Retired Deputy Director General, GSI and Chief of Industries (Planning Commission), proved reserves in the said area are 126.69 million tonnes, probable reserves are 24.39 million tonnes and possible reserves are 24.35 million tonnes. Thus, the total reserves works out to 175.41 million tonnes.

3. The Technocrat Engineering (P) Ltd., has also prepared a prospecting report with reference to another renewal application of the petitioner; wherein the total reserves have been estimated at 60 MTs. in various Survey Nos.710 to 716 of Nadikudi and Sy. Nos.58, 717 and 718 of Alugumallipadu villages. It is observed that these reserves covered in the renewal application are under process.

4. The total reserves of all varieties put together is more than 234 MTs. It is further observed that besides these five renewal applications, another four applications are under process which have to be considered for granting lease. Out of these four applications, three applications have already been taken up for consideration and they are stated to be under process. It is observed that the total extent covered by those applications will work out to 1108.79 acres and if all the renewal applications and fresh applications are considered for grant, the reserves already established and to be established would be quite adequate for the petitioner's cement plant.

8. The first respondent had also taken into consideration the fact that the petitioner has been granted one mining lease over an extent of 445.04 acres in Jayanthipuram village of Jaggaiahpet Mandal, Krishna District, through G.O. Ms. No.452, Industries and Commerce, dated 15-9-1983, in respect of which lease deed has not been executed, so far and the petitioner preferred a revision before the Government of India and the same has been allowed in its favour. The first respondent took note of the fact that if this area is also taken into consideration, the total area which is under consideration through renewals, the fresh leases and the lease granted under the orders of the Central Government in favour of the petitioner, would be 1554.02 acres. The first respondent also took into

consideration the availability of the reserves and accordingly came to the conclusion that the plant can sustain for another period of fifty years and meet the future requirement even according to its expansion plan.

9. For all the aforesaid reasons, the first respondent rejected the application of the petitioner for grant of prospecting licence to the petitioner. The said order is impugned in this writ petition.

10. It is the case of the petitioner that the first respondent has not given any consideration whatsoever to the explanation submitted by the petitioner on 17-5-1999. The material upon which reliance is placed by the first respondent in the impugned order was not part of the show-cause notice dated 29-4-1999. The area covered by the mining leases in favour of the petitioner is not yielding high-grade limestone and precisely for that reason, the petitioner is unable to improve the quality of the cement and hence the petitioner is in search of areas, where it can exploit high grade limestone. The finding that the quality of mineral available is 235.41 million tonnes is totally incorrect and it is exaggerated by twenty four times as to what is actually available for mining. There is no basis whatsoever for making such assumptions about the available mineral in that area covered by the present mining leases granted to the petitioner. The petitioner would have given an appropriate explanation to the first respondent about the reserves of limestone available to the petitioner out of the existing mining leases, had the first respondent given an opportunity of hearing to the petitioner before passing the impugned order. The impugned Memos, are violative of principles of natural justice, as no opportunity of personal hearing has been provided to the petitioner, by the first respondent.

11. In the counter-affidavit filed by the respondents, it is, inter alia, stated that the petitioner company is in arrears of huge amounts towards mineral revenues, its financial position is worsened and the unit has become sick. It is also submitted that M/s. Duncan Cements Limited took over the management of the petitioner unit under the package of rehabilitation scheme. It is further stated that in the existing mining lease for Ac.300.97 acres in Gamalapadu, about 30% of the area was mined and the remaining balance area is covered by high grade limestone which has to be mined and the same will cater the needs of the factory for further two decades. Non-extraction of limestone from the existing mine perhaps may be due to their own management problems, financial crisis, ineffective working and other factors, which may be within the exclusive knowledge of the petitioner company.

12. It is the specific case of the respondent that filing of instant four applications for grant of prospecting licence by the petitioner-company is nothing but to monopolise and block the limestone bearing areas from being granted to others. It is submitted that the performance of the petitioner-company is not up to the mark in all respects.

13. It is further stated that the capacity of the plant of the petitioner is one

million tonnes as of now. The company, however, informed that it is likely to expand to 1.35 million tonnes by 2005. The programme of expansion, as given by the petitioner's version is that it wants to expand to 12.5 million tonnes by 2007 and 2.5 million tonnes by 2043. It is stated that taking into consideration the expansion programme by 2007 to 1.5 million tonnes, the limestone requirement would be 2.25 million tonnes per annum. To sustain the plant for fifteen years the company will be needing about 112.50 million tonnes. Assuming that only 50% of the reserves worked out in the mine plan, are minable out of 234 million tonnes, the plant can sustain for fifty years and also make the future requirements as per the expansion plan of the company. It is the case of the respondents that if the leases already existing consideration, the plant will have no dearth of reserves, including for their future expansion. The reserves available to the company are more than sufficient. It is submitted that the petitioner-company is in the habit of filing innumerable applications for grant of prospecting licence and mining leases to monopolise the limestone deposits. It is also stated that the petitioner is in the habit of indulging in litigation with a view to avoid payment of royalty and various other amounts due to the Government.

14. It is further stated that M/s. Gujarat Ambuja Cement Limited, has also applied for grant of prospecting licence vide their application dated 12-12-1994 over an extent of 19 square kilo metres in Topo sheet No.56 P/14 falling in Kesanupalli, Nadikudi, Alugumallipadu villages of Dachepalli Mandal, Sankarapuram village of Karempudi Mandal, Gogulapadu village of Gurajala Mandal of Guntur District and proposals were sent to the Director of Mines and Geology, Hyderabad, through the Deputy Director of Mines and Geology, Guntur. The applications of the petitioner and M/s. Gujarat Ambuja Cements Limited were taken up on merit and a detailed report has been submitted by the Director of Mines and Geology to the first respondent-Government recommending for rejection of the application of the petitioner to avoid monopoly, and blocking of the limestone area, and recommended the application of M/s. Gujarat Ambuja Cements Limited for grant of prospecting licence for a period of thirty years over an extent of 4440.28 acres in Alugumallipadu, Nadikudi, Kesurampalli, Gangavaram, Sankarapuram and Gogulapudi of Dachepalli Mandal, Gurajala Mandal and Karampudi Mandal in Guntur District, subject to the production of consent of the pattedars before the execution of the lease deed and also subject to such other terms and conditions of Mineral Concession Rules, 1960.

15. The rest of the averments made in the counter-affidavit are nothing but repetition of what has been stated in the impugned order, itself, and, therefore, there is no need to refer them in detail.

16. M/s. Gujarat Ambuja Cements Ltd., filed an application - WP MP No. 30401 of 1999 to implead itself as fourth respondent in the instant writ petition. It shall hereinafter be referred to as the fourth respondent.

17. The fourth respondent, in its counter-affidavit, inter alia, states that the Government of Andhra Pradesh in Memo No.7710/M.II(2)/99-2, dated 22-7-1999

issued orders proposing to grant mining lease for limestone over an extent of 673.73 hectares in Guntur District for a period of thirty years and directed it to submit the mining plans approved by the Indian Bureau of Mines. It is stated that the fourth respondent with an intention to start a cement manufacturing unit in the State made inquiries relating to suitable site and also availability of the limestone deposits, which is the main raw material in the cement manufacture and entrusted the job to its subsidiary, Indo Nippon Special Cements Ltd. The Indo Nippon has addressed letter dated 23-8-1994 to the Deputy Director, Central Land Records, Hyderabad, requesting him to provide the copies of Maps in respect of the above districts and taluks. The Indo Nippon has also addressed a letter dated 2-9-1994 to the Assistant Director, Mines and Geology, Nalgonda requesting him to furnish the information regarding the existing prospecting and mining leases in the District. It was clearly mentioned in the letter that the fourth respondent was intending to set up a cement plant in Nalgonda/Guntur District. Thereafter, Indo Nippon has also addressed a letter dated 30-9-1994 to the Deputy Director, Central Land Records, Hyderabad, Furnishing the names of the villages and Mandals of which the maps are required. It is at this stage, the petitioner having learned about the fourth respondent's initiative to start a cement manufacturing in Andhra Pradesh, and its efforts to locate the limestone submitted an application on 19-10-1994 for prospecting licence in respect of the same area, for which the fourth respondent was making efforts to obtain mining lease. However, the fourth respondent made an application on 12-12-1994 for prospecting licence and subsequently on 16-10-1995 has filed mining lease application over an extent of 711 hectares in Alugumallepadu, Kesanupalli, Gogulapadu, Sankarapuram Siddaiah villages in Dachepalli, Gurazala and Karampudi Mandals in Guntur Districts.

18. In the counter-affidavit filed by the fourth respondent, it is further stated that the first respondent has considered the claims of the petitioner, as well as the fourth respondent company, and after considering the pros and cons and also the capacity of each company to utilise the raw material, the case of the fourth respondent has been accepted by the first respondent and accordingly recommended to the Government of India. It is submitted that the first respondent invoking its power under sub-section (4) of Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, recommended the case of the fourth respondent to the Central Government and accordingly rejected the case of the petitioner. Neither the order recommending the case of the fourth respondent, nor the order rejecting the case of the petitioner suffer from any jurisdictional errors.

19. Rest of the averments made in the counter-affidavit filed by the fourth respondent are not material, as those averments are nothing but repetition of the averments contained in the counter-affidavit filed by the first respondent.

20. However, one particular aspect stated in the counter-affidavit filed by the fourth respondent herein may be noticed : The petitioner company is already

holding mining lease for Ac.460.60. They have also applied for mining lease for Ac.597.83 and for prospecting licence for about Ac.600.00 apart from other lands. As per the mining plan submitted by the petitioner-company and as per the Mining Plan Report approved by the Indian Bureau of Mines who is the competent Government body to scrutinise and approve the estimated reserves, the reserve is 175.41 million tonnes. It is stated that the statement made by the petitioner-company that the estimated limestone reserves in the lands leased to the petitioner is only 10.15 million tonnes is a false statement and contrary to the assessment made by the Indian Bureau of Mines. It is a deliberate attempt on the part of the petitioner-company to suppress the fact.

21. Sri Vedula Venkata Ramana, learned Counsel for the petitioner, raised the following contentions namely:

1. The impugned order is passed on grounds and reasons not stated in the show-cause notice;
2. The impugned order is vitiated for the reasons that irrelevant and extraneous considerations have been taken into account by the first respondent-Government in disposing of the application filed by the petitioner; and
3. The impugned order is ultra vires as no personal hearing has been afforded by the first respondent to the petitioner to present its case.

It is this contention that is seriously pressed into service by the learned Counsel for the petitioner.

22. Learned Government Pleader contends that the order impugned does not suffer from any jurisdictional errors. The first respondent-Government has taken into consideration the explanation submitted by the petitioner. The objections have also been taken into consideration. Opportunity of being heard does not mean an opportunity of personal and oral hearing. No irrelevant and extraneous considerations have crept into the decision making process. The petitioner filed the present writ petition with a view to monopolise the mining leases in its favour and it is an effort to prevent healthy competition among the industries.

23. Sri E. Manohar, learned senior Counsel appearing for the fourth respondent, submits that the petitioner is not entitled for any relief from this Court, as it has suppressed the relevant material facts. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India, acts as a Court of equity and would not interfere with the orders of the statutory authorities, unless such orders have resulted in substantial injustice. It is contended that no legal right of the petitioner has been infringed and even if there is any irregularity in the decision making process, the Court may not issue a writ as prayed for in the facts and circumstances of the case. It is also contended by the learned senior Counsel that affording an opportunity of personal or oral hearing is not a mandatory requirement in each and every case.

24. Before adverting to the questions that arise for consideration in this case, it

would be appropriate to have a look at the statutory background relating to the disposal of the applications for grant of prospecting licence.

25. The Parliament declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals and accordingly enacted the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Act"). Section 3(a) defines "minerals" including all minerals except mineral oils; Section 3(e) says "minor mineral" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may by notification in the official Gazette, declare to be a minor mineral and Section 3(a) declares that "prospecting licence" means, a licence granted for the purpose of undertaking prospecting operations. Section 4 of the Act prohibits all prospecting and mining operations in any area, except under the licence or a lease granted under the Act and the Rules made thereunder. Section 4A enables the State Government on request made by the Central Government in the interest of regulation of mines and mineral development, to terminate the prospecting licence or mining lease prematurely and grant a fresh mining licence in favour of the Government or Corporation owned or controlled by the Government. Section 5 imposes certain restrictions on granting prospecting licence or mining lease. Section 6 prescribes the maximum area for which prospecting licence or mining lease may be granted. Section 7 prescribes periods for which prospecting licence may be granted or renewed. Sections 10, 11 and 12 constitute a group of sections under the title "procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government". Sub-section (2) of Section 11 declares that where two or more persons have applied for a prospecting licence or mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later. However, sub-section (4) of Section 11 says that notwithstanding anything contained in subsection (2), but subject to the provisions of sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant prospecting licence or mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier. Section 13 of the Act, enables the Central Government to make Rules for regulating the grant of prospecting licence and mining leases in respect of minerals and for the purposes connected therewith. In particular, we may notice, that Section 13(2)(a) of the Act empowers the Central Government to make Rules providing for the persons by whom, and the manner in which, the application for prospecting licence or mining lease in respect of a land in which the minerals vest in the Government may be made and the fees to be paid therefor. Section 13(2)(f) enables the Central Government to make Rules providing for the procedure for obtaining a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the

Government and the terms of which and the conditions subject to which, such licence or lease may be granted or renewed.

26. Pursuant to the power vested in it u/s 13 of the Act, the Central Government has made the Mineral Concession Rules, 1960 (for short "the Rules"). Chapter III comprising the Rules 8 to 21 deals with granting of prospecting licence in respect of land in which the minerals vest in the Government. Rule 9 says that an application for prospecting licence in respect of the land in which the mineral vest in the Government is required to be made to the State Government in Form-B through an officer specified in that behalf by the Government. Rule 12 of the Rules confers power upon the State Government to refuse to grant or renewal of a prospecting licence, but only after giving an opportunity of being heard to the applicant and for reasons to be recorded in writing. Such an order is required to be communicated to the applicant.

27. Since interpretation of Rule 12 falls for consideration of this Court, it may be appropriate to notice whole of the rule.

12. Refusal of application for prospecting licence :--(1) The State Government may after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a prospecting licence over the whole or part of the area applied for.

(1-A) An application for the grant or renewal of a prospecting licence made under Rule 9 shall not be refused by the State Government only on the ground that Form B or Form E, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in clauses (d), (e), (f) and (g) of sub-rule (2) of said rule.

(1-B) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

(2) An application for the grant of prospecting licence shall not be refused on the ground only that, in the opinion of the State Government, a mining lease should be granted for the area for which the application for a prospecting licence has been made :

Provided that where the applications for the grant of prospecting licence and applications for the grant of mining lease in respect of the same area are received on the same date or on different dates within a period of thirty days, the applications for the grant of mining lease shall, if the area was previously held and worked under a mining lease, be disposed of before the applications for the grant of prospecting licence are considered.

28. The natural resources, including the mineral wealth vest in the people of Sovereign Democratic Republic of India. Such resources constitute nations

natural wealth. Public interest is the paramount consideration in all matters concerning the regulation of mines and the development of minerals. The Government of the day holds such wealth as a trustee on behalf of the people. "Rivers, Forests, Minerals and such other resources constitute nation's natural wealth. These resources are not to be fettered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. (See : State of Tamil Nadu Vs. Hind Stone and Others,

29. Every decision of the Central or the State Government as the case may be under the provisions of the Act and the Rules framed thereunder, is required to be taken with the sole object of the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community.

30. The application for prospecting licence may have to be dealt with within a reasonable time. Such applications are required to be considered and disposed of by the State Government in accordance with the said Rules. No citizen has any vested right to the grant of prospecting licence and none can claim a vested right to have an obligation for grant of prospecting licence to deal within a particular way. The said Act and the Rules framed thereunder confers right upon the citizens to submit applications for prospecting licence in respect of the land in which the mineral vests in the Government. There is a corresponding obligation on the part of the State to dispose of such applications in accordance with the Rules. Refusal of an application for prospecting licence would not amount to infringement of any vested right as none can claim a vested right for grant of a prospecting licence. The right, if any, is only for consideration of the application in accordance with the Rules.

31. The decision of the Government rejecting the petitioner's applications and the grounds of attack may have to be judged in the aforementioned background.

Principles of Natural Justice

32. The State Government is entitled to refuse to grant or renew a prospecting licence. It may reject the application for grant of a prospecting licence, but only after giving an opportunity of being heard to the applicant and for the reasons to be recorded in writing. The rule of audi alteram partem is an integral part of Rule 12 of the Rules. It is built in the said rule. The Government cannot reject an application without providing an opportunity of being heard to the applicant. The State is bound to record reasons in support of its decision for rejecting the application. The decision is required to be fair and free from arbitrariness.

33. The State Government in the instant case put the petitioner on notice requiring its explanation in the matter, as to why its application should not be rejected on the grounds stated in the notice. The petitioner submitted its detailed explanation in the matter. Admittedly, the State Government has not provided an

opportunity of oral hearing. The question that arises for consideration is as to whether oral/personal hearing is required to be given by the State Government. Whether "an opportunity of being heard" means personal and oral hearing.

34. In *F.N. Roy Vs. Collector of Customs, Calcutta*, , the petitioner preferred an appeal before the Central Board of Revenue after expiry of period of limitation and the same has been dismissed without providing any personal hearing to the petitioner. The question that has come up before the Supreme Court was as to whether there is any requirement to give personal hearing. It is observed that "there is no rule of natural justice that at every stage a person is entitled to a personal hearing"

35. The Supreme Court in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , while interpreting Rule 55 of Mineral Concession Rules, observed that Rule 55 of the rule recognises the principle that quasi-judicial authorities cannot make any decision adverse to a party without giving an effective opportunity of meeting the relevant allegations levelled against him. But, "the said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the Tribunal".

36. In *Union of India (UOI) Vs. Jyoti Prakash Mitter*, , Shah, CJ., speaking for the Constitutional Bench of the Supreme Court interpreting Article 217(3) of the Constitution of India, observed :

"Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an incident of the rules of natural justice that personal hearing must be given to a party like to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid. The President is performing a judicial function when he determines a dispute as to the age of a Judge, but he is not constituted by the Constitution a Court."

(Emphasis is of mine).

37. In *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, , the Supreme Court held that Section 5A of the Land Acquisition Act does not rest on person's demand for personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing. It is held that "personal hearing u/s 5A of the Land Acquisition Act is mandatory."

38. In *Carborundum Universal Ltd. Vs. Central Board of Direct Taxes*, New Delhi, , the Apex Court observed that:

"Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof."

39. In *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, , the Supreme Court observed that "When all the relevant circumstances have been taken into account by the District Committee and the educational authorities, there is no violation of any principle of natural justice merely for the reason that the applicants were not given a hearing by the educational authorities before their applications were rejected." The applications for recognition of the educational institutions were required to be considered by the District Committees in the first instance and the educational authorities were to take a decision based on the recommendations of the District Committee, either to grant or reject the application for recognition of the educational institutions. It is under those circumstances, the Supreme Court observed that if all the relevant circumstances have been taken into account by the authorities, there would be no violation of the principles of natural justice, even if the applicants were not provided with an opportunity of oral hearing.

40. In *Union of India (UOI) Vs. G.R. Prabhavalkar and Others*, , the Supreme Court held that there is no obligation on the part of the Central Government to give a personal hearing to the officers concerned while acting u/s 11(5)(b) of the States Reorganisation Act, 1956. The Supreme Court held that it would be enough if the Central Government considers the representation.

41. In *Union of India and another Vs. M/s. Jesus Sales Corporation*, , the Supreme Court observed that:

"When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the applicant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

42. In *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , the Supreme Court while interpreting Section 36 of the Central Excise and Salt Act, 1944, dealing with the revisionary jurisdiction of the Government observed that it would conduce to better administration and more satisfactory disposal of the grievances of the

citizens, if a personal hearing is afforded whenever complex questions arise for consideration. It is observed :

"The question raised before the Collector of Customs was of a complicated nature and for its proper appreciation required familiarity with the chemical composition and physical properties of nitro-cellulose lacquers and of the substance produced by the appellant company. The Collector in deciding the appeal wrote an order running into 18 typed pages. There were before the Collector conflicting opinion of the Chemical Examiner and the Silk Mills Research Association, Bombay, The Collector gave two personal hearing to the appellant company. No personal hearing was given by the Government of India to the appellant company even though the matter raised complex questions. It is true that the Rules do not require that personal hearing shall be given, but, if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduct to better administration and more satisfactory disposal of the grievance of citizens. The order does not disclose the name or designation of the authority of the Government of India who considered "the points made by the applicants", and it is impossible to say whether the officer was familiar with the subject-matter so that he could decide the dispute without elucidation and merely on a perusal of the papers. The form in which the order was communicated is apparently a printed form. There is a bare assertion by the Joint Secretary to the Government of India in his communication that the Government of India had "carefully considered the points made by the applicants", there is no evidence as to who considered the "points" and what was considered. The Central Government is by Section 36 invested with the judicial power of the State. Orders involving important disputes are brought before the Government."

43. In *Schmidt v. Secretary of State for Home Affairs* 1969 (2) Chan. 149, Lord Denning MR, observed that "where a public officer has power to deprive a person of his liberty or his property, the general principle is that it is not to be done without his being given an opportunity of being heard and of making representation on his own behalf. But in the case of aliens, it is rather different; for they have no right to be here except by licence of the Crown." After referring to the earlier decision in *Ridge v. Baldwin* 1964 AC 40, it is observed that "an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representation. It all depends on whether he has some right or interest, or, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say."

44. In *Breen v. Amalgamated Engineering Union* 1971 (2) QB 175, once again Lord Denning, observed that:

"It all depends on what is fair in the circumstances. If a man seeks a privilege to which he has no particular claim -such as an appointment to some post or other- then he can be turned away without a word. He need not be heard. ... But, if he is a man whose property is at stake, or who is being deprived of his livelihood,

then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand."

45. In *British Oxygen Co. v. Board of Trade* 1971 AC 610, the appellants there sought declaration that certain items of their industrial plant are eligible for grants under the Industrial Act, 1966. The provisions of the Act, 1966, empower the Board of Trade and the Minister of Technology to make grants if the conditions laid down in the Act apply. Section 1 of the said Act provides that the Board of Trade may make grants. It was not argued that "may" in this context means "shall", and it seems that the Board were intended to have a discretion. But, how were the Board intended to operate that discretion. It is observed by Lord Reid that "Does the Act read as a whole indicate any policy which the Board is to follow or even given any guidance to the Board ? If it does then the Board must exercise its discretion in accordance with such policy or guidance." After making an analysis of the provisions of the said Act, it is observed that:

"I cannot find that these provisions give any right to any person to get a grant. It was argued that the object of the Act is to promote the modernisation of machinery and plant and that the Board were bound to pay grants to all who are eligible unless, in their view, particular eligible expenditure would not promote that object. That might be good advice for an advisory committee to give but I find nothing in the Act to require the Board to act in that way. If the Minister who now administers Act, acting on behalf of the Government, should decide not to give grants in respect of certain kinds of expenditure. I can find nothing to prevent him. There are two general grounds on which the exercise of an unqualified discretion can be attacked. It must not be exercised in the bad faith, and it must not be so unreasonably exercised as to show that there cannot have been any real or genuine exercise of the discretion. But apart from that, if the Minister thinks that policy or good administration requires the operation of some limiting rule, I find nothing to stop him."

It is further observed that:

"the general rule is that any one who has to exercise a statutory discretion must not "shut his ears to an application". I do not think there is any great difference between a policy and a rule. There may be cases where an officer or authority ought to listen to a substantial argument reasonably presented urging a change of policy. What the authority must not do is to refuse to listen at all..... There can be no objection to that, provided the authority is always willing to listen to any one is something new to say - of course I do not mean to say that there need be an oral hearing. In the present case the respondent's officers have carefully considered all that the appellants have had to say and I have no doubt that they will continue to do so."

46. In *Me. Junes v. Onslow-Fane* 1978 (1) WLR 1520, Megarry Justice, made some pertinent observations as to when an oral hearing is required to be given and observed that it all depends upon the type of decision in question.

"I do not suggest that there is any clear or exhaustive classification; but I think that at least three categories may be discerned. First, there are what may be called the forfeiture cases. In these, there is a decision, which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuse to grant the applicant the right or position that he seeks, such as membership of the organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority : See : for instance, *Weinberger v. Inglis* 1919 AC 606; *Breen v. Amalgamated Engineering Union* (supra); and see : *Schmidt v. Secretary for Home Affairs* (supra), and *Reg. v. Bramley Metropolitan Borough Council. ex parte Hook* 1976 1 WLR 1052.

It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason; and in such case, the right to an unbiased Tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which *Ridge v. Baldwin* 1964 AC 40, 132, Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the appellant for membership of a licence. The distinction is well-recognised, for in general it is clear that the Courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may it least in some respects be regarded as being more akin to the forfeiture cases than the application cases, for although in form there is no forfeiture but merely an attempt at acquisition that fails the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsustainable for the membership or licence for which he was previously thought suitable."

47. In *Regina v. Huntingdon D.C., ExP. Cowan* 1984 (1) WLR 501, the question arose is as to whether any oral hearing is requiring to given while considering an application for entertainment licence under the provisions of Local Government

(Miscellaneous Provisions) Act, 1982. It is held by the Queen's Bench Division that a Local authority is under a duty, when dealing with the entertainment licences, first, to inform the applicant of the substance of any objection or of any representation in the nature of any objection or of any representation in the nature of any objection; and, secondly, to give him an opportunity to make representations in reply. Lord Glidewell J., speaking for the Queen's Bench Division, observed:

"I am not going to lay down--because it does not seem to be necessary to do so--any clear requirement as to what these representations should be or in what form they should be. I do not think it necessarily follows that an oral hearing should take place; it may well be that in many cases written representations will suffice. I think it is for the local authority to decide if in particular case hearings are required or to lay down their own procedure in this respect, but that some such opportunity is required I have no doubt."

48. Sir William Wade in his *Treatise on Administrative Law*, states, "a "hearing" will normally be an oral hearing. But in some cases it may suffice to give an opportunity to make representations in writing, provided that any adverse material is disclosed and provided, as always, that the demands of fairness are substantially met." (See: *Wade on Administrative Law*, 7th Edition, P.537).

49. De Smith in his *"Judicial Review of Administrative Action"*, observed that:

"When we have spoken of an opportunity or a right to be "heard", we have not necessarily meant an opportunity or right to be heard orally. It must be pointed out, however, that when the words "hearing" or "opportunity to be heard" are used in legislation, they nearly always denote a hearing at which oral submissions and evidence may be tendered..... In the absence of clear statutory guidance on the matter, one who is entitled to the protection of the audi alteram partem rule is now prima facie entitled to put his case orally; but in a number of contexts the Courts have held natural justice to have been satisfied by an opportunity to make written representations to the deciding body, and there are still many situations where a person will be able to present his case adequately in this way."

To Sum up:

50. Oral hearing is not an integral part of hearing, unless the circumstances are so exceptional that without oral hearing a person cannot put up an effective defence. The rule of audi alteram partem does not require full judicialisation in every case. An opportunity of being heard does not necessarily mean an opportunity of oral hearing is to be provided. It depends upon the nature of inquiry and the nature of right involved in a given case. An order or decision which may have the tendency to adversely affect the liberty or property rights may have to be preceded by a notice and oral hearing. In most of the cases where property rights or liberties are not involved, the type of hearing may depend upon variety of factors - whether oral hearing is necessary in such cases

to large extent depend upon the view of the Tribunal or adjudicatory body. Oral hearing may not be necessary where there is no adjudication as such. Oral hearing as such may be necessary in cases where the decision takes away some existing right or possession.

51. In the instant case, no doubt, the petitioner in its reply dated 17-5-1999 to the show-cause notice dated 29-4-1999 requested for a personal hearing and an opportunity for making further oral and written submissions to substantiate its claim and rights in the matter. The first respondent-Government, however, disposed of the matter on the basis of the written representation filed by the petitioner and the material available on record without providing any oral hearing to the petitioner. In my considered opinion the impugned order cannot be held to be vitiated on the ground that no personal hearing was given to the petitioner. As observed, the case on hand does not require any opportunity of personal hearing as such. Neither the provisions of the Act, nor the Rules made there under make any provision as to on what grounds an application for prospecting licence may be rejected by the Government, except that an application for grant or renewal of prospecting licence shall not be refused by the State Government only on the ground that Form B or Form E is not complete in all material particulars, or is not accompanied by the documents referred. Of course, the State Government cannot reject an application for grant of prospecting licence on the ground only that, in the opinion of the State Government, the mining lease should be granted in the area for which the application for prospecting licence has been made. There is nothing in the Rule suggesting as to what are the factors that may have to be taken into consideration by the State Government either for grant or refusal of an application for prospecting licence. Evidently, a very wide discretion is conferred upon the State Government in deciding the applications for grant of prospecting licence. The very application by the interested person is in the nature of asking for a privilege. The order passed by the State Government cannot be interfered with, as long as the decision does not suffer from any legal infirmities. Every application for prospecting licence is required to be considered in a reasonable and fair manner. The application cannot be dismissed on whimsical grounds. Every Governmental action is required to be fair, so also the State Government's action in disposing of the application for prospecting licence. This Court in exercise of its judicial review jurisdiction will not interfere with the decision as long as the same is fair and free from arbitrariness.

52. The State Government in the instant case put the petitioner on notice and gave an opportunity of being heard in the matter. The objections preferred by the petitioner have been taken into consideration and reasons were recorded in support of the decision. The requirement of Rule 12 of the Rules, are complied with.

53. It is, however, urged by the learned Counsel for the petitioner that the State Government has rejected the application of the petitioner not only on the grounds stated in the show cause notice, but also on some other grounds. There

are no new grounds as such stated in the impugned order. Further particulars and details with reference to the grounds mentioned in the show-cause notice are stated in the order. However, in the impugned order, it is stated that the petitioner has been granted one mining lease over an extent of 445.04 acres in Jayanthipuram village, Jaggaiahpet Mandat, Krishna District, through G.O. Ms. No.452, Industries and Commerce, dated 15-9-1983, in respect of which the lease deed has not been executed so far, against which the petitioner has filed a revision before the Government of India and the same has been heard and decided in favour of the petitioner. True this is a new fact stated in the order. But on that ground nothing is held against the petitioner. It is not as if there is any dispute about the said fact. Nothing is stated in the affidavit filed in support of the writ petition about the said fact. Obviously, the revision petition filed by the petitioner before the Government of India has been decided in favour of the petitioner and perhaps the lease deed may have to be executed by the State Government in favour of the petitioner in respect of the said area. This cannot be said to be an irrelevant consideration. Non-disclosure of the said fact in the show-cause notice, in my considered opinion, is not fatal. It would have been entirely a different matter altogether had there been any controversy about the said statement. This particular fact is also within the knowledge of the petitioner about which no dispute is raised by the petitioner in this writ petition. The omission, if any, on the part of the State Government is not so serious which would vitiate the decision, itself. If the impugned order is to be set aside on that ground, the only obligation on the part of the State Government would be to put the petitioner on notice about that fact also inviting its objections. Obviously, no objections could be raised as the said fact is not in dispute at all and, therefore, the whole exercise would be a futile one. It is well settled that the Court cannot issue such futile writs.

54. Learned Counsel for the petitioner would further contend that the first respondent-Government took certain irrelevant and extraneous considerations into account in disposing of the petitioner's applications. I express my inability to agree. The Government took into consideration, the capacity of the plant and its proposal of expansion. The programme of expansion shown by the petitioner has been taken into consideration and the details are worked out. Those considerations cannot be said to be irrelevant considerations. The conclusions reached that the reserves available to the petitioner are more than sufficient cannot be faulted with. The decision to reject the prospecting licence applications of the petitioner, in my considered opinion, does not suffer from any infirmity. What factors that are required to be taken into consideration, while disposing of the applications for granting prospecting licence are not stated in the Statute and the Rules framed there under. The information and the material taken into consideration by the first respondent-Government in disposing of the applications are not prohibited factors and materials by the statute. The State Government, in my considered opinion, is entitled to take all such factors into consideration as the one taken in the case and those factors are relevant for the purpose of the

disposal of the prospecting licence applications. The petitioner has neither any vested nor statutory right to get a prospecting licence. The statute and the Rules framed there under merely guarantee a fair consideration of the application for granting prospecting licence. That has been done. In the circumstances, it cannot be said that the petitioner has been subjected to any unfair or arbitrary treatment by the first respondent-Government. Therefore, it would be safe to conclude that there is no infringement of any legally enforceable right of the petitioner.

53. For all the aforesaid reasons, the writ petition fails and the same shall accordingly stand dismissed. There shall be no order as to costs.