
(1984) 12 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Appeal No"s. 1328 to 1330 of 1984

Anupama Minerals

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-1984

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Forest (Conservation) Act, 1980 — Section 2, 3, 4
Forest (Conservation) Rules, 1981 — Rule 4, 5, 6
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 1986 AP 225

Hon'ble Judges : Jeevan Reddy, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : M.V. Rajagopal Reddy and A. Suryanarayana Murthy, for the Appellant; K.V. Subba Rao, Standing Counsel, for C.G., Government Pleader, for C.G., for the Respondent

Judgement

Reddy, J.—(A) The land in survey No. 7 of Gandlepalli village, situated with in Gandlepalli Reserve Forest, contains limestone (Slabs), which is a minor mineral. Several persons applied for mining leases, in respect of the said land. The grant of leases with respect to minor minerals is governed by the Andhra Pradesh Minor Minerals Concession Rules 1966 framed by the State Government under S. 15 of the Mines and Minerals (Regulations and Development) Act, 1957. The appropriate authority to grant the mining leases under these rules is the Assistant Director or the Deputy Director, as the case may be. The competent authority granted four leases in respect of Ac. 25-00, Ac. 35-00, Ac.10-00 and Ac. 15-00 respectively in survey No. 7 in favour of M/s. Anupama Minerals M/s. Anupama Minerals, D. Vital Goud and Mallaiah Goud respectively under his orders dated 11-12-1975, 10-4-1975, 10-4-1975 and 11-12-1975 respectively, for a period of five years. Two more leases were granted on 3-7-1978 in respect of Ac. 16-00 and Ac. 20-00 in favour of Sri Mohd. Rahmutulla Khan and M/s Kalings Shabad Stone Co-operative labour Contract Society, Indanoor

respectively for a period of five years. The proviso to R. 9 of the A. P. M. M. C. Rules, requires that the application for grant of a lease in respect of a reserved forest land, can be disposed of only after consultation with the Divisional or the District Forest Officer concerned. The Divisional Forest Officer was accordingly consulted, before granting the above leases; he expressed no objection to the grant of leases.

2. With a view to avoid repetition and confusion, it would be sufficient if we state the facts in the Writ Petition No. 9935/1984 wherein the petition is M/s. Anupama Minerals. The leases in its favour was granted on 10-4-1975, and was to expire on 9-4-1980. According to the M. M. C. Rules, a lessee is entitled to two renewals subject to certain conditions and criteria mentioned in R. 31(XIV). The petitioner applied for renewal of his lease on 8-1-1980. No orders were passed on the application for a period of 90 days, with the result, that the petitioner's application stood rejected as provided by R. 13(2). Against this deemed rejection, the petitioner filed a Revision Petition before the State Government, which directed the Deputy Director of Mines and Geology, by its order dated 30-4-1980, to entertain and consider the renewal applications, in accordance with Rules.

3. At this stage, i.e., after the period of lease had expired, the Forest Department issued a notice to the petitioner, on 23-5-1980, to stop quarrying operations, stating that since the petitioner's lease period was expired, he must stop his quarrying operations. (Similar notices were issued to the other lessee also, whose lease too had expired) Against the said notices of the Forest Department, two Writ Petitions 2479 and 2535 of 1980 were filed in this Court. They were disposed of by a Division Bench of this Court on 23-9-1980; the Deputy Director of Mines and Geology was directed to consider the renewal applications filed by the petitioner, according to law and pass orders thereon within six weeks. Pending the passing of the orders by the Deputy Director, the lessees were allowed to continue the quarrying operations.

4. On 25-10-1980 the Forest (Conservation) Act, 1980 came into force. (Initially, an Ordinance was issued on that date; subsequently the Act was made with retrospective effect from the date of the issuance of the Ordinance.) The applications for renewal filed by the said two petitioners were taken up for consideration, on 5-2-1981, by the Deputy Director of Mines and Geology, and rejected on the sole ground that the F. C. Act 1980 prohibits the grant of leases or renewal of leases within the reserve forest. These orders were again challenged by another batch of Writ Petitions (W. P. No. 679 of 1981 and batch) by the petitioner, which came up for hearing before a Division Bench of this Court consisting of Madhavarao, J. And one of us (Jeevan Reddy, J.) and were disposed of on 9-6-1982. The Division Bench held that the rejection of the renewal applications by the Deputy Director was under a misapprehension of law, namely that he was under the impression that the F. C. Act 1980 prohibited the grant of leases altogether within the reserve forest area, whereas the Act did not

contain any such absolute ban but only provided that prior approval of the Central Government shall be obtained before using any portion of the reserve forest for a non-forest purpose, which includes the use of land for mining purposes as well.

It was observed :

"Section 2 does not absolutely prohibit the use of the forest land or serve forest or any part thereof non-forest purpose. All that it says is that no State Government or other authority shall make an order directing the reserve forest or forest land or any portion thereof to be used for a non-forest purpose except with the prior approval of the Central Government (of course the section also prohibits dereservation of a reserve forest or any part thereof in a similar fashion). It must accordingly be held that the rejection of the petition filed by the petitioner for renewal of the mining lease with reference to S. 2 was invalid and irregular. What the respondents ought to do is that if they find the renewal application to be in order in all other respects they must address the Central Government, enclosing all the relevant material for its orders in terms of S. 2 of the Act and it is for the Central Government to decide on such material Whether to grant the prior approval or not. The respondents are therefore directed to take action accordingly as early as possible."

5. The Bench further directed that, pending consideration of the renewal applications filed by the petitioners, they shall be entitled to continue the quarrying operation, subject to their liability to pay seigniorage fee, royalty and such other imposition as may be leviable and/or levied under the A. P. M. M. C. Rules, 1966 from time to time and in accordance with other relevant rules, applicable in that behalf.

6. After the Bench judgment was delivered, it is now stated before us, the Deputy Director of Mines and Geology did not take any action in the matter of renewal of leases. It appears that the Forest Department Practically wrested control of the entire matter and has been dealing with the applications for renewal. It understood the Bench direction as directing it so send the matter to the Central Government for according, or refusing, prior approval, whether it is in favour of the grant or against it. Feeling bound by the order of the Bench, the Forest Department, though it was against the grant of renewals, sent the matter to the Central Government with a recommendation that prior approval should not be granted. The Central Government considered the matter, in consultation with the Advisory Committee, as contemplated by the Rule framed under the F. C. Act, and refused prior approval by its proceedings dated 15-12-1983. These orders were communicated to the Forest Department.

7. ON 6-2-1984, the Divisional Forest Officer, Mahaboobnagar, issued notices to all the petitioners/appellants herein to stop quarrying operations inasmuch as the Central Government has refused its prior approval for renewal and also because the leases in their favour have expired. Thereupon, the petitioners preferred W.

P. Nos. 3505, 3506, 7604 and 3945 of 1984 in this Court. These writ petitions were heard by P. Ramachandra Raju, J., and dismissed by this judgment dated 25-9-1984.

8. At this stage, the Deputy Director of Mines of Geology passed orders on 7-5-1984 rejecting the renewal applications consequent upon the refusal of the Central Government to accord approval for renewal of the leases. The petitioners filed appeals on 19-5-1984 against the said orders of the Deputy Director of Mines and Geology. But, at the same time, they filed Writ Petition Nos. 9783 and 9784 of 1984 etc., in this court challenging the validity and the legality of the orders passed by the Deputy Director dt. 7-5-1984.

9. Against the judgment of P. Ramachandra Raju, J., dismissing the writ petitions, Writ Appeals Nos. 1328 to 1330 of 1984 have been preferred. All the above writ petitions and the Writ Appeals are now posted before us. It may, however, be appropriate to state that, so far as the petitioners in W. P. Nos. 8670 and 9729 of 1984 are concerned, their applications for renewal were never sent to the Central Government as was done in the case of applications filed by the other petitioners. What happened in those two cases is that, after receiving the orders of the Central Government refusing to accord prior approval in the cases of other petitioners, orders were passed by the Deputy Director of Mines and Geology, refusing renewal in the case of these two petitioners also, with reference to the Central Government orders. It may be remembered that these two petitioners were also having their leases in the same area viz., Survey No. 7.

(B) 10. The following contentions are urged in these Writ Appeals and Writ petitions by the learned Counsel Sri V. Rajagopala Reddy and D. Srinivas for the petitioners :-

(1) that the procedure followed by the respondents while dealing with the petitioners' applications for renewal is contrary to the M. M. C. Rules and also to the direction given by the Division Bench of this Court in W. P. No. 691 of 1981 and batch dated 9-6-1982.

(2) that the refusal of the Central Government to accord prior approval as also the refusal of renewal by the Deputy Director is vitiated by total non-application of mind and therefore the orders are bad;

(3) that the Central Government passed orders refusing to accord prior approval without even hearing the petitioners who are the affected parties; the order thus passed in violation of the principles of natural justice is void;

(4) that the provisions of the F. C. Act 1980 and the Rules have not been followed in this matter, nor were the relevant facts and circumstances taken into consideration while deciding the grant/refusal of the application. At the same time certain irrelevant circumstances were taken into consideration, which has vitiated the decision of the Central Government.

11. In so far as the petitioners in W. P. Nos. 8670 and 9729 of 1984 are

concerned, two additional contentions are urged to the following effect : -

(5) that the orders refusing renewal passed by the Deputy Director are bad for the additional reason that their cases were never referred to or sent to the Central Government for according prior approval as required by law and as directed by the aforesaid judgment of the Division Bench; the orders refusing renewal are therefore illegal;

(6) that on 7-5-1984 when the Deputy Director passed orders refusing renewal, there were no applications pending in the eye of law. The applications for renewal filed sometime in 1983 stood rejected by virtue of R. 13(2) of M. M. D. Rules against which the petitioners had already filed revisions before the State Government which were pending before the State Government on that date. Therefore the orders of the Deputy Director dated 7-5-1984 are passed in vacuum and are therefore unsustainable in law.

(C) 12. Before dealing with the above contentions urged by the learned counsel for the petitioner, it would be appropriate to clarify the legal position as obtaining under the M. M. C. Rules, the F. C. Act, 1980 and the Rules framed thereunder.

13. We will first examine the position obtaining prior to the coming into force of the F. C. Act, 1980. According to R. 5 of the A. P. M. M. C. Rules, 1966 no person shall undertake quarrying of any minor mineral in any areas, except under and in accordance with the terms and conditions of a quarry lease or a permit granted under these rules. R. 8 provides for the Forum in which the lease deed has to be executed. R. 9 provides that every application for grant of a quarry lease or renewal of a quarry lease in respect of a land shall be made in Form B to the Assistant Director concerned. Proviso to R. 9, which is relevant for our purpose, is as follows :

"Provided that the application for grant of a lease or a permit in respect of a reserved forest land shall be disposed of after consultation with the Divisional or the District Forest Officer concerned."

Rule 12 prescribes the procedure to be followed by the competent authority in the matter of grant of lease. According to R. 15, the period of lease is either one year or five years as the case may be, depending upon the circumstance whether the mineral can be extracted with or without much equipment or investment. If it is a mineral which can be extracted without much equipment or investment, the period of lease is one year; otherwise it is five years. R. 31 provides the conditions of permit or lease. It says that every lease shall, in addition to such conditions as may be specifically stipulated in each case, be subject to the conditions mentioned therein. It is sufficient if we refer to the condition (xiv) which reads to the following effect :-

"If the lessee to whom a quarry lease is granted has duly observed all the conditions of his lease or permit and given ninety days" previous notice in writing to the Deputy Director, requesting grant of the renewal of the lease, the Deputy

Director shall grant renewals for not more than two times to the period of quarry lease, subject to the following criteria, namely :-

I Renewal :

- (a) Systematic development of the quarry/ quarries
- (b) development of good communication facilities and their maintenance;
- (c) investment on transport:
- (d) training of skilled labour and commitments on labour retention and inducement;
- (e) preliminary work and investment for establishment of a processing (dressing or upgrading) plant utilising the product from the quarry/quarries in question;
- (f) establishment of market for the product, either in raw form or in processed or semi-processed form.

II Renewal :

- (a) establishment of processing plant, either individually or in joint partnership with others;
- (b) development of market in the country or abroad; (effort in this direction is very important)
- (c) any long term contracts with established industries for supply of quarry product;
- (d) setting up of an industry in the region, either individually or in partnership with others;

Note: 1. Adherence to and non-violation of rules during the terms of occupation is a primary prerequisite in all cases of consideration of renewal.

(2) In case of patta lands, renewal may be automatic."

14. Rule 35 provides for an appeal against any order passed by the Assistant Director or Deputy Director while R. 35A provides for a revision to the State Government.

15. The President of India issued the Forest (Conservation) Ordinance, being Ordinance 17 of 1980, on 25th Oct., 1980 published in the Gazette dated 18th Dec., 1980, subsequently, an Act was made, called the Forest (Conservation) Act, 1980 with effect from the date of issuance of the Ordinance. Both the Ordinance and the Act are in identical terms. It would be sufficient if we refer to the provisions of the Act. S. 2, which is central to the Act, reads thus :

"2. Restriction on the dereservatoin of forests or use of forest land for non-forest purposes :-

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order direction

(i) that nay reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation :- For the purpose of this section "non-forest purposes" means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation."

Section 3 provides for constitution of an Advisory Committee by the Central Government to advise it in the matter of grant of approval under S. 2 and any other matter connected with the conservation of forest which the Central Government may refer to it. S. 4 confers the rule-making power on the Central Government to carry out the provisions of the Act. It is provided that the rules made under the Act shall be laid before each House of Parliament for the prescribed period.

16. Rules have been made under the Act, called the Forest (Conservation) Rules, 1981. Rule 4 prescribes the procedure for making the proposal by a State Government or other authority for obtaining prior approval of the Central Government under S. 2 of the Act. The rule reads as follows :-

"4. Procedure to make proposal by a State Government or other Authority.

(1) Every State Government or other authority which seeks prior approval of the Central Government under S. 2 shall send its proposal to the government along with the particulars specified in the Annexure to these Rules.

(2) Every proposal referred to in sub-r. (I) be sent to the following address, namely, Secretary to Govt., of India, Department of Agriculture and Co-operation, Krishi Bhavan, New Delhi."

Rule 5 prescribes the matters which the Advisory Committee should take into consideration while tendering its advice to the Central Government on the proposals referred to it. The Advisory Committee is also entitled to suggest any conditions or restrictions on the use of any forest land for any non-forest purpose which in its opinion, would minimise adverse environmental impact. The factors, which the Committee ought to take into consideration while tendering its opinion, are :

"(a) Whether the forest land proposed to be used for non-forest purpose forms part of the nature reserve, national park, wildlife sanctuary biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

(b) Whether the use of any forest land is for agricultural purpose or for the rehabilitation of persons displaced from their residences by reasons of any river valley or Hydro-electric project;

(c) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) Whether the State Government s or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof."

Rule 6 then says :

"The Central Government shall, after considering the advice of the Committee tendered under R. 5 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same."

It is also necessary to notice the contents of the pro forma prescribed by R. 4. It is in this pro forma that the prior approval has to be sought. The Form reads thus :

"ANNEXURE

Submission of proposals by the State Government and other authorities regarding dereservation of reserved forests or use of forest land for non-forest purpose.

1. Short narrative of the proposal and project/scheme for which the forest land is required with maps and sketches.

2. Location of the project/scheme;

(i) State/Union Territory.

(ii) District.

(iii) Forest Division, Forest Block, Compartment etc.,

(3) Total land required for the project/scheme along with its existing land use.

4. Details for forest land involved :

(i) Legal status of forests (namely, reserved, unreserved etc.,)

(ii) The details of flora existing in the area including the density of vegetation.

(iii) Topography of the area indicating gradient, aspect, altitude etc.,

(iv) Its vulnerability to erosion whether it forms part of a seriously eroded area or not?

(v) Whether it forms a part of national park, wildlife sanctuary, nature reserve,

biosphere reserve etc., if so, details of the area involved;

(vi) Rate/endangered species of flora and fauna found in the area.

(vii) Whether it is habitat for migrating fauna or forms a breeding ground for them; and

(viii) Any other feature of the area relevant to the proposal.

5. If the project for which forest land is required involves displacement of people or requires raw-material from any forest area the details of proposals for their rehabilitation and procurement of raw material respectively should be furnished.

6. Proposed steps to be taken to compensate for the loss of the forest area, the vegetation and wild life.

7. Detailed opinion of the Chief Conservator of Forests/Head of the Forest Department concerned covering the following aspects namely :

(i) Out-turn to timber, fuel-wood and other forest produce from the forest land involved.

(ii) Whether the district is self-sufficient in timber and fuel wood; and

(iii) The effect of the proposal on

(a) Fuel wood supply to rural population.

(b) Economy and livelihood of the tribals and backward communities.

(iv) Specific recommendation of the Chief Conservator of Forests/Heads of the Forest Department for accepting or otherwise of the proposal with reasons thereof.

Certified that all other alternatives for the purpose have been explored and the demand for the required area is the minimum demand for forest land.

X X X X

Signature of the

authorised Officer of the State

Government Authority

N. B. :- While furnishing details of flora and fauna, the species should be described by their Scientific name."

17. It is thus clear, on a reading of the Act and the Rules, that with effect from the date of coming into force of the Act, neither the State Government nor any other authority is entitled to permit any forest land or any portion thereof to be used for any non-forest purpose except with the prior approval of the Central Government. "Non-forest Purposes" means breaking up or clearing of a forest land or portion thereof for any purpose other than reafforestation. Indisputably

using a forest land or a portion thereof for the purpose of mining is a non-forest purpose. According to R. 4, "every State Government or other authority" seeking prior approval of the Central Government shall send its proposal to the Government along with particulars specified in Annexure to the Rules. The annexure requires the authorities seeking the prior approval to furnish all relevant particulars, including the specific recommendation of the Chief Conservator of Forest, so as to enable the Central Government to take a proper and correct decision, consistent with the object and intendment, underlying the Act. In particular, Cl. (Iv) of item 7 in the prescribed pro forma requires the authority seeking prior approval of the Central Government to set out "specific recommendations of the Chief Conservator of Forests/Head of the Forest Department for accepting or otherwise of the proposal with reasons thereof." The authority is also required to append a certificate that all other alternative for the purpose have been explore and that the demand for the required are a is the minimum demand for forest land. Before the Central Government accords or refuses its approval under S. 2, it has to consult the Advisory Committee, which Committee is directed to take into consideration the several factors mentioned in R. 5 while tendering its opinion. The factor mentioned in R. 5 emphaxize the concern of the Central Government to conserve the forests. After receiving the opinion of the Advisory Committee, the Central Government is entitled to make such further enquiry, as it may consider necessary in a given matter, and either grant the approval with or without conditions or reject the request for prior approval.

18. The Rules make it clear that prior approval of the Central Government under S. 2 can be sought for either by the State Government or by "other authority". This is as it ought to be. A forest land or a portion thereof may be sought to be used for a non-forest purpose either by the State Government or by any other project and it may itself seek permission of the Central Government under S. 2 of the Act. Similarly, an Electricity Board or a Road Transport Corporation or any other statutory authority may acquire a forest land or a portion thereof permission. Now, the Assistant Director/ Deputy Director is also a statutory authority under the A. P. M. M. C. Rules, 1966 and is competent to grant-the mining leases in respect of minor minerals. But by virtue of S. 2 of the F. C. Act. Such authority has to obtain prior approval of the Central Government, before granting a mining lease in respect of any forest land or any portion thereof. If so, it is he who has to seek prior approval of the Central Government. It is he who has to send his proposal seeking prior approval of the Central Government in the form prescribed by the rules, which means that he must furnish all the information which is required to be stated in the pro forma. This may mean that he has to consult and obtain the relevant information form the Forest Department. Moreover, he has also to obtain specific recommendations of the Chief Conservator of Forests for accepting or refusing his proposal and mention the said recommendations in the pro forma. We are of the opinion that, it would be in the fitness of things if the authority while sending the pro forma seeking

the approval of the Central Government, under S. 2 also encloses a copy of the letter or the proceeding of the Chief Conservator agreeing or disagreeing with his proposal, besides mentioning the purpose thereof in the appropriate column of the prescribed pro forma. This would have the effect of placing the entire opinion of the Chief Conservator, including the reasons for his agreement or disagreement of the proposal, as the case may be, before the Central Government.

19. Another circumstance which we would like to clarify is this : The occasion for an authority in this case the Deputy Director of Mines and Geology seeking the prior approval of the Central Government would arise only if and when the authority is satisfied that the application for grant of renewal of lease is in order and is in conformity with the A. P. M. M. C. Rules, 1966 and is of the opinion that the grant/renewal ought to be granted. It is only when he is of such opinion that an occasion would arise for him to seek the prior approval of the Central Government. In case, the application is not found to be in order or is not in conformity with the A. P. M. M. C. Rules or if the authority is of the opinion that the lease or renewal should not be granted, there would be no occasion or necessity for him to seek the prior approval of the Central Government. We also make it clear that it is always open to the Central Government, while granting/refusing its approval, to consult or to obtain the opinion of the State Forest Department. R. 6 of the Forest (Conservation) Rules, 1981 expressly empowers the Central Government to make such further enquiry as it thinks appropriate in given case, besides obtaining the opinion of the Advisory Committee.

20. Since under the F. C. Rules, 1981 prior approval has to be sought for either by the State Government or other authority, as clarified above, it is not correct to contend that the Forest Department of the State Government alone is the proper authority to seek prior approval, in the prescribed pro forma, i.e., under S. 2 of the Act. Indeed the Forest Department of the State Government does not directly come into picture, except probably in a case where the Forest Department itself wants to use the Forest land or portion thereof for a non-forest purpose. The prior approval has to be sought for in the prescribed pro forma by the authority which requires a forest land or a portion thereof to be used for a non-forest purpose, which, in this case, means the Deputy Director of Mines and Geology. No doubt, such authority shall have to ask for and collect all necessary information required to be stated in the pro forma from the Forest Dept., he was also got to obtain the specific opinion of the Chief Conservator of Forests with respect to his proposal and forward it to the Central Government, as clarified above. But, what is clear is that the pro forma has to be sent by and the prior approval has to be sought, by the authority which requires a forest land or a portion thereof for a non-forest purpose. This aspect we are emphasizing in view of the contention urged before us by the learned Government Pleader that once the F. C. Act and the Rules come into force, the prior approval has to be sought for only by the Forest Department and not by any other authority. The learned Government Pleader relies upon a letter No. 8-480-PRY (Coord) (Pt) from Sri. M.

V. Kesavan, Under Secretary to the Government of India, Ministry of Agriculture, (Department of Agriculture and Co-opn.) New Delhi, dated 9th Sep., 1981 addressed to the Forest Secretaries of all States and Union Territories. The letter states that the practice of individual departments of the State Governments, addressing the Central Government for prior approval, is not correct and that "it is the administrative responsibility of the Forest department, which is the real custodian and owner of the forests in each State, to correspond with the Central Government regarding transfer of forest areas etc., under the Act." The letter further states that it would not be proper to shift this responsibility to other Departments of the State after issuing a "No objection certificate." The letter finally states, "it has accordingly been decided that proposals for deservations etc., under the Forest (Conservation) Act, 1980 will be entertained by this Ministry only from the Forest department of State/Union Territories." Reliance is also placed by the learned Government Pleader upon another letter from the same officer of the Central Government dated 26-10-1981 addressed to the Chief Secretaries of the State Governments in Union Territories stating that "proposals for this purpose (under S. 2 of the Act) should be submitted through the Forest Department of the respective State/Union Territory in the prescribed pro forma enclosed with this letter." We are, however, of the opinion that the said officer appears to have not correctly appreciated the import of the procedure prescribed by the rules. The Rules nowhere say that the prior approval of the Central Government should be sought for only by the Forest Department. On the other hand, R. 4 speaks of permission being sought for by the "State Government or other authority." Moreover, the prescribed form requires the authority to mention the specific recommendations of the Chief Conservator also in the said pro forma. The difficulty in agreeing with the view expressed in the aforesaid letter of the Central Government is that in a case where an authority seeks the prior approval of the Central Government and it is obliged to sent the proposals through the Forest Department. The Forest Department may sit tight over the proposal and may choose not to forward the same to the Central Government at all, in case it is not agreeable to the proposal. It would mean practically conferring a power of veto on the Forest Department of the State in such matters. The Act contemplates the prior approval to be granted or refused by the Central Government and not by the State Government to take a decision in the matter on the basis of the material furnished in the prescribed proforma. The opinion of the Advisory Committee and such further material as it may gather in the further enquiry which it may choose to make in a given case. For this purpose, it is equally necessary that the opinion of the authority seeking permission must also be before the Central Government. The authority seeking the permission may state the reasons why the forest land or a portion thereof should be used for a non-forest purpose. It is not difficult to imagine a case where the public interest itself demands that a particular forest land or a portion thereof is put to a non-forest use. Take a case where a very valuable mineral is found in the reserve forest. Public interest demands that it should be quarried, or take a case where a railway line has to be paid or a power plant has to be

established through or in a forest land; the concerned authority till give reasons why it is necessary to use the forest land for such a non-forest purpose. These reasons must also be before the Central Government as also the opinion of the Forest department. All this constitutes the relevant material upon which the Central Government has to take a decision. For the above reasons, we are of the opinion that the prior approval has to be sought for either by the State Government or by an authority, whoever it is, who proposes to use the forest land or portion thereof for a non-forest purpose. The State Government or such other authority can send the proposal directly to the Central Government, it need not route it through the forest Department of the State Government. Of course, as clarified above, the proforma has to give full information required by it including the specific recommendation of the Chief Conservator (whether for or against the proposal) and must also be enclosed by a copy of the recommendation of the Chief Conservator as clarified by us.

(D) 21. Now coming to the facts of the cases before us it is evident that the applications for renewal filed by the petitioners were first rejected by the Deputy Director of Mines and Geology under a misapprehension of law that the Forest (Conservation) Act totally prohibits such grant. When a Bench of this Court clarified the position and directed the Deputy Director of Mines and Geology to first examine whether the applications for renewal were in order in all respects and then to address the Central Government enclosing all the relevant materials for its orders in terms of S. 2 of the Act, the Deputy Director did not take any steps whatsoever - or to be more precise, was not allowed to take any steps in the matter. The Forest Department wrested control of the entire matter. This much is not disputed before us. It did not allow the Deputy Director of Mines and Geology to deal with the applications of renewal at all. It arrogated to itself the power of grant/renewal of mining lease, came to the opinion that the renewal should not be granted and then addressed the Central Government that too under the impression that the Bench judgment obliged into do so in all cases, whether it is agreeable to the grant/renewal or not. Only after the Central Government refused its prior approval that the Deputy Director of Mines and Geology again entered the picture and communicated formal rejection of the application for renewal. He did not scrutinise the application from the standpoint of R. 3 (xiv) nor did he ever form his opinion, whether the renewals should or should not be granted. Indeed, the applications for renewal ought to have been scrutinised by the Deputy Director of Mines and Geology to find out whether they are in conformity with the rules and it was for him to form the opinion whether to grant the renewal or not. Only if he was of the opinion that the renewal should be granted, an occasion would have arisen for him to seek the approval of the Central Government under S. 2 of the Act in accordance with R. 4 of the F. C. Rules, i.e., in the prescribed pro forma. Neither under the A. P. M. M. C. Rules, 1966 nor under the F. C. Act and Rules, has the Forest Department of the State any authority to deal with or consider the application for grant of renewal of mining leases.

22. The learned Government Pleader, argued in the alternative that the irregularity in this case, if any, is only of a technical nature; that the Central Government has indeed taken all the relevant factors into consideration; that the Advisory Committee, which advised the Central Government against the grant of prior approval, has also tendered its opinion after taking into account all the relevant circumstances, including the considerations mentioned in R. 5 of the F. C. Rules, and that in such a situation direction re-consideration of the matter would be an empty formality. We are not prepared to agree. The irregularities pointed out above, are not of a mere technical nature but of substance. The Deputy Director of Mines and Geology was not allowed to deal with the applications for renewal, after the Bench judgment was delivered, nor was he allowed to verify and examine whether the applications are in conformity with the A. P. M. M. C. Rules and whether the leases should be renewed or not. It is only when he is satisfied in the above respects that an occasion arises for him to collect information which he has to state in the pro forma prescribed by R. 4 of the F. C. Rules and also to obtain the opinion of the Chief Conservator. If the Deputy Director decides not to grant the renewal, no further question arises; the matter ends there. Where however, he decides to grant renewal, then he must be given an opportunity to state why the renewal should be granted. His opinion and his recommendation must also be before the Central Government when it takes a decision under S. 2 of the Act. None of the above steps or procedures was taken or followed in these cases. What has happened in this case is totally inconsistent with the Rules. The competent authority has not been allowed to deal with the matter and an authority not competent under the Rules has dealt with the same. We are, therefore, of the opinion that the matter must receive a reconsideration. Accordingly, we direct that the applications for renewal should be first dealt with by the Deputy Director of Mines and Geology. If he finds that the applications for renewal are in accordance with the rules and that the renewal ought to be granted, then he should address the Central Government for its prior approval in accordance with the procedure adumbrated above and then pass final orders in accordance with the opinion of the Central Government.

(E) 23. Before we conclude, it is necessary to deal with the Certain contentions of the learned counsel for the petitioners. The first contention is that before refusing its approval under S. 2, the Central Government ought to hear them. Such requirement, it is contended, arises by virtue of the principles of natural justice. We are unable to agree.

24. The application of principles of natural justice varies from case to case, depending upon the facts and context of each case. As is often said, the principles of natural justice cannot be put in a strait-jacket. Here, it must be seen; the land belongs to the Government. It is within a reserve forest. The declaration as a "Reserve Forest" is a statutory matter governed by the A. P. Forest Act. The declaration as a reserve forest is not a meaningless exercise. It is done with a view to preserve and promote the forests in the country. The mineral which the petitioners are now asking for on lease, also belong to the State. The

petitioners cannot claim a fundamental right to carry on their business on the State's property. It is indeed a privilege that is granted to them. No doubt, the granting of privilege is regulated by rules and not by the Act, but the nature of their right must be kept in mind, when examining the application and the reach of the principles of natural justice.

25. The decision of the Central Government has to be arrived at keeping the public interest in view. The Central Government must be deemed to be the best authority to judge, where the public interest lies. Moreover, it is not as if the matter is left to the arbitrary will and pleasure of the Central Government. The Central Government has to take a decision on the relevant material placed before it i.e., the information contained in the pro forma prescribed by R. 4 the material accompanying it and the opinion of the Advisory Committee, which is in the nature of a specialist Committee. The Central Government is also empowered to make such further enquiry as it thinks appropriate in a given case and the material or information gathered, if any, in such an enquiry shall also have to be considered. The opinion of the Central Government, though subjective is to be arrived at on objective facts. It is equally relevant to note that power is vested in the Central Government, which is the Highest executive authority in the country. There is no reason to presume that the Central Government will act capriciously or without reference to the relevant material. Even if in any given case, it so acts it is not as if the concerned person is without a remedy.

26. Yet another factor to be kept in mind on this aspect is that by refusing to accord prior approval, the Central Government is not taking away an existing right, it is only refusing to confer a new right. Even a renewal is a grant, as held by the Supreme court in *State of Tamil Nadu Vs. Hind Stone and Others*, . In this Case, it has been held that no one has a vested right to the grant or renewal of a mining lease and that it lies within the discretion of the State no doubt governed by the statutory rules, to grant or refuse to grant the lease. In such a situation, we do not think that it is necessary or appropriate to import the principle of *audi alteram partem*. It is true that the Central Government has to act fairly and has to taken a decision in a fair manner. But that only means that it must apply its mind to the relevant material before it, keeping in view the criteria prescribed by the rules and arrive at a decision. We are, therefore, of the opinion that the petitioners cannot claim to be heard, as of right, before the Central Government takes a decision in the matter. Even if it takes a decision to refuse to accord approval for the grant of lease of renewal, it is not bound to hear the party affected.

27. The second contention urged is that "Conservation" only means preservation and protection of existing forests, but no re-afforestation. We are unable to agree. Conservation of forests includes both. Forests have to be regularly cut, to meet the needs of the country. At the same time, re-afforestation should go on to replace the "vanishing forest." It is a continuous and integrated process. We see no warrant for restricting the scope of the Act, in the manner suggested.

28. In view of our decision on the main question, it is unnecessary for us to deal with the contention that the rejection of renewal is vitiated by total non-application of mind. Nor is it necessary to deal with the contention raised in W. P. Nos. 8670 and 9729/84 that their applications were not in fact referred to the Central Government as directed by the Bench. Those applications will also have to be dealt with now in accordance with the directions given hereinafter uniformly in all the cases.

29. Mr. Rajagopala Reddy further contended that, in the very same proceedings, under the which the Central Government have decided to refuse approval for the renewal of leases in favour of the petitioners they have accorded prior approval to similarly placed lessees. Reference is to the case considered as item 9 in the report of the Advisory Committee. (The petitioners' case was considered under item 16). The contention is that though the case of the lessees in item 9 and the petitioners herein (Item 16) in practically identical, different treatment was accorded to them. It is not necessary to express any opinion on this score in view of the course we are adopting. We have no reason to doubt that, if and when the matter comes before the Central Government again, they shall examine the matter fairly.

30. Now coming to the contention of Sri D. Srinivas the learned counsel appearing for the petitioners in W. P. Nos. 8670 and 9729/84 to the effect that on 7-5-1984 when the Deputy Director passed orders refusing renewal, the applications for renewal as such were not pending before him in the eye of law we think that, while technically speaking the learned counsel is correct, it would be just and appropriate in all the circumstances of the case, to direct the Deputy Director, Mines and Geology, to treat the applications for renewal filed by the petitioners in these writ petitions as subsisting and pending and deal with them as directed herein. We may also note that Revisions are said to be pending before the State Government against the rejection of these petitioners' renewal applications. With a view to obviate multiplicity of proceedings, we direct the Deputy Director of Mines and Geology to treat those applications as subsisting now.

(F) 31. The writ appeals and writ petitions are accordingly allowed in the following terms :

(i) The Deputy Director of Mines and Geology shall, forthwith, take up the applications for renewal filed by the petitioners and examine them in accordance with law and the observations contained herein. If he is of the opinion that they, or any of them, are made in compliance with the A. P. M. M. C. Rules and that they, or any of them should be granted the renewal, he shall address the Central Government for its approval under S. 2 of the F. C. Act, 1980, in accordance with the F. C. Rules, and in accordance with the observations in this judgment.

(ii) If the Deputy Director of Mines and Geology so addresses the Central Government, the latter shall consider the matter in accordance with law and the

observations in this judgment and communicate their approval or rejection, as the case may be, to the Deputy Director of Mines and Geology;

(iii) Having regard to the delay which has already occurred in the matter, we direct the deputy Director of Mines and Geology to examine the applications for renewal forthwith and to take a decision whether to address the Central Government or not, for its prior approval, within a period of one month from the date of receipt of this order. It is also directed that in case the Deputy Director of Mines and Geology addresses the Central Government for according prior approval, the Central Government shall take a decision in the matter within three months thereof and communicate its opinion to the Deputy Director; and

(v) The period between the date, on which the Deputy Director addresses the Central Government for its prior approval and the date on which he receives the final opinion of the Central Government, shall be excluded, while calculating the period mentioned in R. 13(2) of A. P. M. M. C. Rules.

(G) 32. A request is made by the learned counsel for the petitioners that since the petitioners have been carrying on the quarrying operations under the orders of the Court notwithstanding the expiry of their leases and notwithstanding the non-grant of renewal of lease so far, they should be allowed to continue the quarrying operations more particularly, when we are directing reconsideration of the matter. We are not inclined to accede to this request. The lease in two cases herein expired in April, 1980, in two other cases in Dec., 1980 and in two other cases in July 1983. Though there has been no renewal they have been carrying on the quarrying operations within the reserve forest. They have already reaped an advantage which they have not yet established, they are entitled to. We see no justification for permitting them to continue the quarrying operations, in the above circumstances and particularly in view of the F. C. Act, whereunder the decision to permit mining has to be taken by the Central Government alone. The request is accordingly negatived.

33. No costs, Advocate's fee Rs. 150/- in each.

34. Order accordingly.