

(1990) 10 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 8896 of 1980

B. Shivaji Mendon

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (1990) 4 KarLJ 314

Hon'ble Judges : H. G. Balakrishna, J

Judgement

1. The petitioner has questioned the order passed by the revising authority (respondent-2) under Section 30 of the Mines and Minerals (Regulation & Development) Act, 1957, confirming the order of the State Government (respondent-1) rejecting the application of the petitioner for grant of mining lease for Kyanite in Devachalla village, Sullia Taluk, South Canara District. Annexure-P is the order passed in revision and Annexure-L is the endorsement served on the petitioner by the State Government informing the petitioner of the rejection of the revision petition on the ground that the area applied for falls within the reserved area for State exploitation. The petitioner has asked for quashing of both Annexures "P" and "L". The petitioner has also sought for a declaration that the reservation of the area in question for State exploitation or by its undertaking is not effective on the petitioner's claim.

2. The petitioner applied for grant of mining lease for Kyanite over an area of 850 acres of land in Devachalla village, Sullia Taluk, South Canara District, on 16-12-1976. The application was rejected by the State Government by its order passed on 30-11-1979 for the reason that the area applied for falls within the area reserved for State exploitation. Aggrieved by the said order, a revision was preferred before the revising authority under the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") which came to be rejected, upholding the order of the State Government. This has resulted in this writ petition.

3. The contentions raised on behalf of the petitioner are that the petitioner being the earliest applicant has a preferential right to the mining lease and, therefore, the application could not have been rejected.

The second contention is that the order passed by the Central Government on 21-9-1979 under Section 11(4) of the Act is void since the petitioner was not notified of the State Government's request for reserving the area for its own exploitation without affording an opportunity to the petitioner to show cause against accord of approval by the Central Government.

The third contention is that the order of reservation dated 21-3-1979 is not only illegal, but also ultra vires and is violative of Article 14 of the Constitution of India and lastly that the revising authority has not considered all the contentions urged before it by the petitioner in the revision petition.

4. On the other hand, respondent-3 herein, viz., Mysore Minerals Limited has contended in substance as follows:

The Company was registered in 1966 with the object, inter alia, of acting as the agents of the State Government for exploiting mining areas reserved for operation by the State, to search for minerals, carry on mining and to carry on trade in minerals. The Company is stated to have an expert staff of Geologists, Mining Engineers and experts in the field of Marketing and Administration. It is claimed that the Company is one of the leading exporters of iron ore and manganese ore in the Country and that it holds mining leases for various minerals such as iron ore, manganese ore and chromite besides others. Kyanite is stated to be a refractory material which is capable of withstanding very high temperatures and being a strategic mineral is available only in limited quantities in the State of Karnataka. The high alumina refractories which are made out of Kyanite and Sillimanite are extensively used in iron, steel, cement, glass, ferro-alloy and fertiliser industries as well as in Thermal Power Plants. It is stated that the total reserve of Kyanite of all grades in India is hardly about 3.8 million tons out of which only 0.5 million ton is indicated reserves and 3.3 million tons are inferred reserves. On account of limited availability of Kyanite in the Country and its vital need in the Country's industries, the Government of India has imposed a ban on the export of high grade Kyanite of certain specification. The Kyanite which is available in the Country are required for internal consumption and on account of depleting resources it is necessary to scientifically and systematically exploit Kyanite to the best advantage of the Country. It is stated that lumpy Kyanite deposits occur only in some of the Districts of the State in the Taluk of Sullia of South Canara District in the form of boulders fit for manufacture of high grade refractories. For the above reasons, the Company, by its letter dated 5-8-1976, brought to the notice of the State Government the limited availability of Kyanite and other important minerals like Asbestos, Barytes, Green Quartz and Dolomite and emphasized the need for careful planning and exploitation of the same. The South Kanara Division of the State Department of Mines and Geology located the occurrence of large deposits of Kyanite in Sullia Taluk of

South Kanara District and not the petitioner as claimed. The State Government, taking into account the importance of the mineral and the need for exploitation of the same on a planned basis and also in a scientific and systematic manner, reserved this mineral for State exploitation through the Company. A notification dated 21-3-1979 was issued by the State Government reserving the areas specified therein in Mysore, Mandya, Hassan, Coorg and South Kanara Districts. It is stated that the application of the petitioner dated 16-12-1976 was referred to the Company by the State Government in order to elicit opinion of the Company as to whether the area over which the lease was sought by the petitioner would fall within the area to be reserved for State exploitation. Thereafter, the application of the petitioner was rejected by the State Government on 23-9-1977 in view of the Company's interest in the said area containing large deposits of lumpy Kyanite. It is contended that the State Government having reserved the area in question among other areas for State exploitation through the Company was justified in declining mining lease to the petitioner and that the State Government is empowered to reserve any area which in its own opinion is in public interest for exploitation by the State. The action of the State Government found concurrence of the Central Government approving the reservation. It is also contended that the question of granting the area to a private party even though a prior applicant does not arise in view of the reservation for State exploitation and the contention of the petitioner that whereas the petitioner applied on 16-12-1976, the Company applied for lease on 10-2-1977 does not vest any legal right in the petitioner merely on the basis of being a prior applicant to the exclusion of the right of the State to reserve certain areas for its own exploitation. It is pointed out that the notification dated 21-3-1979 issued by the State Government reserving the area in question and the order dated 21-9-1979 have not been challenged and, therefore, the writ petition cannot be sustained. It is further contended that the pendency of the application of the petitioner does not bar the State's right to reserve an area in public interest.

5. As regards the non-issue of a show cause notice to the petitioner and non-affording of an opportunity of hearing, is untenable since the Act does not contemplate any such procedural requirement particularly in view of the fact that the question of granting any portion of the area reserved by the State Government to a private party does not arise. Violation of Article 14 of the Constitution is denied. It is pointed out that the Article 19(6) of the Constitution provides for the State or a Corporation owned by the State or controlled by the State to carry on any trade, business, industry or service whether to the exclusion complete or partial of citizens or otherwise, in so far as it is authorised under any law. It is also pointed out that the Central Government for the third time passed an order in the third revision petition of the petitioner on 1-9-1979 and the only reason given therein is that it is well established that the State Government is empowered to reserve any area when considered expedient to do so in public interest for exploitation in the public sector and that, therefore, the

order of the State Government is confirmed and the revision rejected. The order is sought to be justified since it indicates the reason for not accepting the revision petition of the petitioner and that, therefore, there is no merit in the writ petition.

6. The State Government has also filed its counter and the stand taken by the State Government and respondent-3 is analogous.

7. The petitioner has also filed a reply to the objections of the respondents in amplification of the grounds urged in the writ petition. Respondent-3 has also filed a rejoinder meeting the points urged in the reply filed by the petitioner. An allegation is made in the reply filed by the petitioner that the prospecting licence for Kyanite was granted in the year 1981 even in the reserved area. This is categorically denied by the respondent-3 stating that the prospecting licence for Kyanite in Siddapura village, Coorg District, granted to one Smt. B.S. Vijayalakshmi is in respect of an area which lies 4 miles away from the reserved area, towards the East of longitude 75° 50".00" which is the boundary of the reserved zone and that no prospective licence was ever granted to any private party in the reserved area. It is also emphasized by respondent-3 that the leases granted in the reserved area are not in respect of Kyanite, but are in respect of lime-stone and that the notification issued by the State Government on 21-3-1979 specifically relates to reservation in respect of Kyanite. The allegation of discrimination treatment is also emphatically denied.

8. The point for consideration is whether the order under Annexure-P rejecting the revision petition of the petitioner and the endorsement under Annexure-L issued by respondent-1 deserve to be quashed for any legal infirmity.

9. Elaborate arguments were addressed by the learned counsel appearing for the parties. The undisputed material fact is that the notification reserving the area for State exploitation issued by the State Government on 21-3-1979 is not challenged by the petitioner. There is no prohibition on State exploitation under the Act. There is no vested legal right involved to support the claim of the petitioner under Section 17-A of the Act. What is, in fact, protected under this provision is only a subsisting prospecting licence or mining lease and the petitioner did not hold any subsisting prospective licence or mining lease. Under Section 11 of the Act, mining lease could be granted only if the land is available for grant.

10. The Act was promulgated subsequent to the Mines and Minerals (Regulation and Development) Act, 1948, by the Central Legislature. The Mineral Concession Rules, 1960 were framed by the Central Government under Section 13 of the Act and brought into force on 26-11-1960, and by virtue of Rule 68 of the Mineral Concession Rules, 1960, the Mineral Concession Rules, 1949 ceased to hold the field with effect from 26-11-1960. The Mines and Minerals (Regulation and Development) Act, 1948 (Act 53 of 1948) was impliedly repealed by the Act to its extent and scope in respect of mines and minerals and also the regulation and

development of minerals by virtue of Section 6 of the General Clauses Act. The law that holds the filed now is the Act besides the Mineral Concession Rules, 1960.

11. The object of the Act is to regulate mines and development of minerals under the control of the Union of India under Entry 54 of List I of the Seventh Schedule to the Constitution of India. In fact, the said Act covers the entire field of mineral development. According to Section 18(1) of the Act, a duty is imposed on the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India empowering the Central Government to make such rules as deemed appropriate by notification. Another object of the Act and the Rules is the conservation of important minerals with special attention to the efficient and economic working of mines in the national interest. In fact, restrictions are imposed controlling the price of basic minerals needed for industrial development.

12. Against this statutory background, the order passed by the revising authority confirming the order of the State Government has to be considered. According to Rule 59(e) of the Mineral Concession Rules, 1960, no areas which has been reserved by the State Government under Rule 58, shall be available for grant unless an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of Rule 21 or sub-rule (2) of Rule 40 as the case may be and the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant. This rule was inserted by GSR 86(E), dated 10-2-1987. Section 17-A of the Act deals with reservation of area for purposes of conservation empowering the Central Government with a view to conserve any mineral, after consultation with the State Government for reservation of any area not already held under any prospecting licence or mining lease. This section was inserted by Central Act No. 37 of 1986 with effect from 10-2-1987. Neither Section 17-A of the Act, nor Rule 59 of the Rules, are attracted to the facts of the case since the impugned orders were passed prior to the coming into force of the said provisions. However, the fact cannot be lost sight of that the inherent right to exploit its own minerals dates back to 1959.

13. The power to conserve any mineral is inherent in the scheme of the Act itself for the purpose of the Act is the regulation of mines and development of minerals under the control of the Union. Protection is available to the petitioner only if the petitioner had an existing prospecting licence or mining lease in respect of the area in question. It cannot be said that the impugned orders suffer from colourable exercise of power and discrimination. All that has happened is that in disposing of the provision petition of the petitioner, the Revising Authority has upheld the order of the State Government inasmuch as the area in question falls within the area which has been reserved for State exploitation by a notification issued by the State Government in accordance with law. It is no doubt true that

the application of the petitioner was pending before the authority when the consultation of the State Government and the Central Government took place as to whether the area should be reserved for State exploitation. Mere pendency of an application cannot deter either the State Government or Central Government to take a decision on the question of reservation of any area for the purpose of exploitation of Kyanite by the State. Conservation and exploitation of a mineral is the exclusive right of the State which cannot be called in to question so long as the intention to reserve is duly notified in accordance with law. In the instant case, the proposal of the State Government to notify the area in question for reservation so that the State could exploit Kyanite through the Company which is owned by it, cannot be disputed. Necessary sanction of the Central Government has been obtained before reservation has been given effect to. The only reason assigned by the revising authority in rejecting the revision petition is that the area over which the petitioner is seeking the mining lease falls within the area notified and reserved for State exploitation of Kyanite. I am enabled to see how the impugned order of the revising authority could be characterised as a non-speaking order. Even a single reason validly supporting an order of the concerned authority anchored in a statutory provision is sufficient for the purpose of disposing of the application on statutory basis. No more reasons are needed in the facts and circumstances of the case to justify the impugned order. The statutory provisions do not admit any ambiguity either in interpretation or in application. Once again it has to be emphasized that the petitioner has no vested right for grant of a mining lease and, therefore, is no justification for quashing the order of the revising authority.

14. The principle of *res judicata* was pressed into service on behalf of the petitioner. We are concerned with the order passed in the third revision petition. In the earlier orders passed by the revising authority, there is no final determination of the issue because of both earlier occasions the revising authority remitted the case back to the State Government for its consideration and for disposal of the application of the petitioner in accordance with law, thus leaving the question open. In these circumstances, it is not possible to accept the plea of *res judicata*. Though provisions came to be incorporated both in the Act and the Rules long after the disposal of the third revision petition of the petitioner, expressly empowering reservation of areas of exploitation for the purpose of conservation, it cannot be said that earlier to these provisions the State did not enjoy the power of reserving any particular area for the purpose of State exploitation either on grounds of national interest or public interest. There can be no two opinion about the fact that Kyanite is a scaree material available in the Country but very much required by the State for its own exploitation and use. Unless there is an express statutory bar in evidence either under the Act or under the Rules excluding or precluding the State from reserving any area for its own exploitation either by itself or through its instrumentality, it is my opinion that the State is fully empowered to resort to such reservation after due notification with the prior approval of the Central Government. All the necessary

procedures have been followed in the instant case and I do not see any illegality or irregularity which vitiates the reservation by the State of the area a part of which is claimed by the petitioner for this exploitation. I may also observe that the policy is issue-based and there is no place for personal animus and no equities come into play as against statutory provision. Ultimately I am of the opinion that the petitioner is not entitled to the reliefs sought in this writ petition. The facts and circumstances of the case do not warrant interference with the impugned orders.

15. In the result, for the foregoing reasons, the writ petition is dismissed.