

(1997) 10 MAD CK 0014

In the Madras High Court

Case No : Writ Appeal No"s. 645 to 647 of 1997

Golden Granites

APPELLANT

Vs

K.V. Shanmugam and Others

RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 215, 226, 32
Contempt of Courts Act, 1971 — Section 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 164, 364, 5(3)
Forest (Conservation) Act, 1980 — Section 2, 3, 3A, 3B
Motor Vehicles Act, 1988 — Section 47, 47(1), 47(3), 57
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 39, 8A

Citation : AIR 1998 Mad 150

Hon'ble Judges : M. Karpagavinayagam, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : A.L. Somayajee for K. Ramu, M. Venkatachalapathi for M. Sriram and R. Muthukumaraswamy, for the Appellant; V.T. Gopalan for Ramakrishna Reddy and for S. Udayakumar, Addl. Central Govt. Standing Counsel, R. Nagarajan, Government Advocate and V. Selvaraj, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.—A common order was passed by Sathasivam, J. in Writ Petitions Nos. 8505 and 8845 of 1995 and Writ Petition

No. 18513 of 1996 on 30-4-1997 filed by one K.V. Shanmugam, Ponnuswamy and K.V. Shanmugam respectively.

2. Writ Petition No. 8505 of 1995 was filed for a certiorarified mandamus, calling for the records of the State of Tamil Nadu in G.O.Ms. No. 119

(Industries (B2) Department), dated 5-5-1995, quash the same and to consequently direct the respondents 1 to 4 therein to pass orders, granting

lease or renewal in favour of the writ petitioner, Mr. K.V. Shanmugam in respect of 18.60 acres in bit No. 5 of Badanavadi Reserved Forest,

Ponnagaram Taluk, Dharmapuri District by disposing of the petitioner's application, dated 9-5-1994.

3. Writ Petition No. 8845 of 1995 was filed by (sic) Mr. Ponnusamy, a member of the Tamil Nadu Legislative Assembly. He filed the writ petition

for a certiorari relating to the proceeding of the State of Tamil Nadu in G.O.Ms. No. 119 (Industries B2 Department), dated 5-5-1995 and to

quash the same.

4. Writ Petition No. 18513 of 1996 was filed by the very same K.V. Shanmugam for a declaration, declaring that the lease Agreement, dated 19-

5-1995 executed by the District Collector, Dharmapuri District in favour of M/s. Golden Granites, Kaveripattinam, Dharmapuri District in respect

of quarry measuring 6.6 acres in bit V of Badanavadi Revenue Forest, Sunjalnathan village, Pannagaram Taluk, Dharmapuri District, registered as

document No. 662 of 1995 in the Sub-Registrar's Office, Ponnagaram is null and void.

5. The respondents in the said writ petitions filed separate counter-affidavits. The contesting respondent, M/s. Golden Granites has also filed a

counter affidavit, explaining that the Government Order issued in favour of M/s. Golden Granites, Dharmapuri District clearly states that the grant

of lease is subject to obtaining concurrence from the Government of India, Ministry of Environment and Forests, New Delhi and that the

Government Order clearly specifies that actual quarrying operations, i.e. the activity of non-forest purpose, by the said firm in the subject forest

lands shall be permitted only after obtaining the mandatory approval of the Government of India under the Forest Conservation Act 1 of 1980

(hereinafter called as "the Act"). It is further stated that the impugned Government Order is only a grant of quarrying a minor mineral under Rule 39

of the Tamil Nadu Minor Mineral Concession Rules, 1959 and that it cannot be misconstrued in any way that the impugned grant of quarrying

permission amounts to grant of permission to cigar the forest growth in the subject quarry lands in the reserve forests in violation of the objectives

of the Act. The State of Tamil Nadu, the first respondent in Writ Appeals Nos. 646 and 647 of 1997 filed a separate counter affidavit, denying the

various allegations made by the petitioner in the writ petitions. It is also contended that Writ Petition No. 8845 of 1995 has been filed by the said

Mr. Ponnusamy in bad faith and there is no public interest involved and that the same was filed only to oblige the private interest of K.V.

Shanmugam, who has filed writ petitions on identical grounds. The Union of India has also filed a counter affidavit, contending that as per Section 2

of the Act, prior concurrence of the Central Government has got to be obtained.

6. The main contention of learned senior Counsel for the petitioner in all the writ petitions is that since the claim is made for quarrying granite in the

reserved forest laqds of the Government of Tamil Nadu, prior approval of the Central Government u/s 2 of the Act is mandatory and hence, the

impugned order, granting lease in favour of M/s. Golden Granites cannot be sustained. It is further submitted that it is not open to the State

Government to grant lease even with a special condition that the commencement of quarrying operation should be done only after obtaining

concurrence of the Government of India, Ministry of Environment and Forest, New Delhi without prior approval of the Central Government.

Sathasivam, J. on ant elaborate consideration of the entire materials placed before him and the arguments of the respective counsel held that the

impugned order in G.O.Ms. No. 119 (Industries B-2 Department, dated 5-5-1995 cannot be sustained and the learned Judge quashed, the said

Government Order for other reasons also recorded in his detailed order. Aggrieved against the common order, dated 30-4-1997 made in Writ

Petitions Nos. 8505 and 8845 of 1995 and 18513 of 1996, M/s. Golden Granites, Dharmapuri filed all the above Writ Appeals.

7. We have heard the arguments of Mr. A.L. Somayajee and Mr. M. Venkatachalapathi, learned senior Counsel and Mr. R. Muthukumaraswamy

for the appellants and Mr. V.T. Gopalan, learned senior Counsel and Mr. V. Selvaraj, learned Counsel for the respective contesting respondents.

8. Mr. A.L. Somayajee, learned senior Counsel for the appellants contended that the application, dated 9-5-1994 by which the writ petitioner in

Writ Petition No. 8505 of 1995 stakes his claim as ri/al applicant is not maintainable in law since the very same application has been said to have

been made by the writ petitioner for the benefit of the firm M/s. Golden Granites only, in respect of the very same quarry lands. The writ

petitioner's claim is therefore against the decree of Courts and the assurance given by him before this Court. The present claim of the petitioner in

Writ Petition No. 8505 of 1995 is based on the earlier quarrying rights. The earlier quarrying rights have been clearly held to be the right of the firm

of M/s. Golden Granites by decree of the Courts and as such the petitioner cannot claim for renewal of quarrying rights based on the earlier grant

made in G.O.Ms. No. 382 and thus, the same is not sustainable in law and facts. Learned senior Counsel further submitted that there is no valid

application of the petitioner pending before the State of Tamil Nadu and that the prayer in the writ petition is itself in violation of Section 2 of the

Act.

9. Coming to Writ Petition No. 18513 of 1996, it is submitted that in G.O.3D No. 119 (Industries Department), dated 5-5-1995 it has been

specifically laid down that the grant is subject to the special condition that the commencement of quarrying operation should be done only after

obtaining concurrence from the Government of India, Ministry of Environment and Forest, New Delhi for non-forest purpose of quarrying black

granite. Hence, the said lease deed cannot confer any right on the third respondent for any non-forest activity of quarrying operations. Quarrying

operations can be resumed only after obtaining the concurrence of the Government of India u/s 2 of the Act and the same is the special condition

stipulated in the impugned Government Order. Mr. Somayajee, learned senior Counsel for the appellants also submitted that the Government

Order as well as the lease deed executed on 19-5-1995 would become invalid and inoperative, if the concurrence of the Government of India is

not eventually obtained. Therefore, there is no substance in challenging the execution of the lease deed pursuant to the impugned Government

Order. Notwithstanding the same, the third respondent in the said writ petition has given solemn undertaking in the counter affidavit that he would

not commence the quarrying operation or any non-forest activities in the said land without obtaining appropriate permission from the Central

Government under the Act. Thus, Mr. Somayajee, learned senior Counsel submitted that there is no merit or substance in Writ Petition No. 18513

of 1996, challenging the validity of the execution of the lease deed pursuant to the impugned Government Order. The special condition imposed in

the Government Order should be read into the lease deed by implication. Mere non-mention of the same cannot invalidate the lease deed. In fact,

no non-forest activity has been undertaken till now pursuant to the execution of the lease deed as the concurrence of the Central Government is still awaited.

10. Mr. A.L. Somayajee, learned senior Counsel further submitted that the writ petitioner, viz., K.V. Shanumgham wants only to ventilate his personal grievance against his younger brother, K.V. Narayanasami, the Managing Partner of the firm and that the personal grievance cannot be ventilated in the writ petition in any manner. It is not open to the petitioner in Writ Petition No. 8505 of 1995 and 18513 of 1996 to maintain the writ petition either in personal capacity as a rival claimant or otherwise in public interest. The prayer in Writ Petition No. 8505 of 1995 clearly and amply demonstrates and even the writ petitioner himself seeks for a prayer in violation of the Act. The prayer cannot be granted in the eye of law even on the basis of admission and submission by the writ petitioner. The writ petitioner's application, dated 9-5-1994 was only claimed as a rival application, as stated above, which in fact is non-existent in the eye of law. The said K.V. Shanumgam had set up Mr. P. Ponnusami to file Writ Petition No. 8845 of 1995. The said Mr. P. Ponnusami is a former member of the Tamil Nadu State. Legislative Assembly and also a personal friend of Mr. K.V. Shanmugam and only to oblige the personal interest of the said K.V. Shanmugam, Writ Petition No. 8845 of 1995 has been filed by Mr. P. Ponnusami. Mr. A.L. Somayajee, learned senior Counsel in support of his contentions cited certain authorities. Mr. R. Muthukumaraswami, learned Counsel appearing for the appellant in Writ Appeal No. 646 of 1997 submitted that even though the writ petitioner, Ponnusami claims himself to be a public interest litigant, he has filed the said writ petition to subserve the interest of K.V. Shanmugam and even though there has been nine other identical grants to quarry in forest area by the State of Tamil Nadu, exercising the powers under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959, no steps have been taken by the writ petitioner to implead the other grantees. Thus, it is clearly proved that the writ petitioner is not a bona fide public interest litigant and that the alleged public interest litigation subserved only the interest of K.V. Shanmugam. Mr. R. Muthukumaraswamy, learned Counsel for the appellant in Writ Appeal No. 646 of 1997 further submitted that the

quarry in question is not in a virgin forest area and that the same had been exploited for quarrying granites right from 1974. The grant even though sought for in an area of 18.6 acres, the grant was actually made only for an area of 6.60 acres which is only the rock bearing areas, absolutely devoid of vegetation or forest growth. Even in the reports of Principal Conservator of Forest and the District Forest Officer, it could be clearly seen that the said land even though is situated in reserved forest is void of any forest vegetation and only a few shrubs exists in the area apart from couple fuel wood trees over 12.60 acres excluded from the impugned grant. It is also submitted that the impugned grant has been made by the State Government which was working under the time constraint because of the orders of this Court made by J. Kanakaraj, J. directing that the application for grant of renewal of mining lease should be considered and disposed of within a period of twelve weeks. Thus, absolutely, the State Government did not have any time to approach the Central Government for obtaining prior approval or concurrence as required u/s 2 of the Act. Thus, under the time constraint, State Government passed the impugned Government Order, granting lease to the said Golden Granites, however, with a pre-condition that the quarrying operations should not be commenced without prior approval of the Central Government, as per the relevant provisions of the Act.

11. It is also argued that both the Central Government and the State Government are acting in different field or sphere of legislation, and thus, what is to be seen is to reconcile between the powers of both the State and the Central Government. A Full Bench Judgment of the Andhra Pradesh High Court in Writ Appeal No. 1471 of 1986, dated 26-12-1989 reported in Hyderabad Abrasives and Minerals, Hyderabad Vs. The Govt. of A.P. Forest Department, Hyderabad and another, was cited by the counsel for the appellant, whereunder the Andhra Pradesh High Court had specifically dealt with the scope of application of Section 2 of the Act. The issue was discussed elaborately. The finding of the Full Bench of Andhra Pradesh High Court reads as follows (para 12):

...We are therefore of the opinion that the sentence cannot be read as saying that the grant of mining lease is tantamount to grant of permission to break up or clear the forest lands. What is material for the purpose of the Act is

not the date of which the lease is granted, but the date on which the State Government or authority permit the breaking up or clearing of forest land or any portion thereof....

It is submitted that under the impugned Government Order the grantee has not been given the right or privilege to break forest land for non-afforest purposes except that the prior approval of the Central Government under the Act. Thus, the relevant date for the purpose of determination of the issue, in the interest of the Act, is the date on which the permission to commence non-forest purpose of quarrying activities in the subject quarry.

Thus, the claims made with regard to the non-forest activity u/s 2 of the Act made by the writ petitioner in Writ Petitions Nos. 8505 and 8845 of 1995 has no material substance and the same is not sustainable.

12. Mr. R. Muthukumaraswamy, learned Counsel for the appellant in Writ Appeal No. 646 of 1997 invited our attention to the decision of the

Supreme Court in Janata Dal Vs. H.S. Chowdhary and Others, , particularly paragraphs 95 to 97, 102, 105 and 107 to emphasise that the Courts

should not allow its process to be abused by a mere busybody or a meddlesome (sic) or wayfarer or officious intervener without any interest or

concern except for personal gain or private profit or other oblique consideration. In S.P. Gupta Vs. President of India and Others, , it was

emphatically pointed out that the relaxation of the rule of locus standi in the field of public interest litigation does not give any right to a busybody or

meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following caution:

But ...we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and of for

personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by

politicians and others to delay legitimate administrative action or to gain a political objective....

Referring to me decision of the Supreme Court reported in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , Mr.

Muthukumaraswamy submitted that this Court should do well to reject the applications of the busybodies at the threshold. In paragraph 107 of the

Judgment in Janata Dal Vs. H.S. Chowdhary and Others, , it was held as follows:

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can

approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal

gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the

Court for vindicating any personal grievance, deserves rejection at the threshold....

Mr. Muthukumaraswamy further submitted that there was no denial by way of any further reply affidavit for the additional counter affidavit filed for

and on behalf of the third respondent in Writ Petition No. 8845 of 1995, particularly to paragraphs 4 to 6 of the additional counter affidavit.

13. Mr. M. Venkatachalapathi, learned senior Counsel submitted that the letter, dated 9-5-1994 submitted by the writ petitioner had been

addressed only to the District Forest Officer, Dharmapuri District and not to the Government. He appeared on behalf of the appellant in Writ

Appeal No. 645 of 1997. He also argued that the application, dated 9-5-1994 is not maintainable in law and that the same had been made for the

benefit of the firm in respect of the same quarry lands. He also drew our attention to the assurance given in favour of the firm before this Court in

C.M.A. No. 9013 of 1994 in C.M.A. No. 316 of 1994, Mr. M. Venkatachalapathi, learned senior Counsel for the appellant firm contended that

the claim is therefore against the decree of courts and the assurance given to this Court. Therefore, according to the learned senior Counsel, the

applicant is guilty of gross suppression of material facts. According to him, the prayer as sought for in Writ Petition No. 8505 of 1995 cannot be

countenanced and that the claim of the writ petitioner based on the application, dated 9-5-1994 under Rule 39 of the Tamil Nadu Minor Mineral

Concession Rules, 1959 cannot be valid in the eye of law. The writ petitioner having made his application to the District Forest Officer,

Dharmapuri District has made a false claim in the affidavit filed in support of the writ petition, as if he has submitted the application to the State of

Tamil Nadu. Any application under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 has got to be made only to the State of

Tamil Nadu, who is the competent Authority to exercise powers under the said Rules. Thus, it is submitted that there is no proper and valid

application of the writ petitioner pending before the State of Tamil Nadu and that the writ petitioner is not entitled to any relief under law to

maintain the writ petition, as prayed for by him.

14. Mr. Venkatachalapathi, learned senior Counsel further submitted that the present claim of the writ petitioner in Writ Petition No. 8505 of 1995

is based on the earlier quarrying rights, which have been clearly held to be the right of the firm of M/s. Golden Granites by decree of the Courts

and as such the writ petitioner cannot claim for renewal of quarrying rights based on the earlier grant made in G.O.Ms. No. 382 and thus the same

is not sustainable in law and facts. According to learned senior Counsel, the prayer as sought for in Writ petition No. 8505 of 1995 cannot be

countenanced in the eye of law even as per the claim of the writ petitioner for the following reasons:

(a) There is no valid application of the petitioner pending before the State of Tamil Nadu;

(b) The prayer in the said writ petition is itself in violation of Section 2 of the Act;

(c) Rule 39 of the Tamil Nadu Minor Minerals Concession Rules, 1959 having been deleted from the said Rules, the prayer has become

infructuous;

(d) For fabrication of a non-existent application;

(e) The writ petitioner having come to Court with unclean hands with gross suppression of material facts relating to earlier civil disputes and decree

of Court in respect of the subject quarry; and

(f) Even as per the counter affidavit of the State of Tamil Nadu, there is no application of the petitioner pending before the State of Tamil Nadu as

on date.

15. Mr. A.L. Somayajee, learned senior Counsel cited three decisions before us in support of his arguments.

(1) Union of India and others Vs. Kamath Holiday Resorts Pvt. Ltd., ;

(2) T.N. Godavarman Thirumulkpad Vs. Union of India and others, ; and

(3) Hyderabad Abrasives and Minerals (P). Ltd. v. State of Andhra Pradesh (1997) 7 Supreme 141. Union of India and others Vs. Kamath

Holiday Resorts Pvt. Ltd., was cited for the proposition that the Act was in fact meant to involve State Government or other Authorities nominated

by them and that the Act was not meant to apply to Union Territories, as they themselves were governed by the Central Government. In other

words, it was maintained that an Officer of the Central Government moving in the matter need not seek prior approval of the Central Government

u/s 2 of the Act. The Supreme Court further held that the assertion and interpretation as accepted by the High Court were in the teeth of the clear

applicability of the Act, extending to the whole of India, except the State of Jammu and Kashmir. The Act was obviously meant to apply to Union

Territories as well and not the States alone and in that context, the expression "other authority" as is evident from the above reproduction of the

provision is all-comprehensive and far wide so as to include any authority concerned with the matter. Such Authority instantly being the Collector

was thus required to seek approval of the Central Government before passing orders u/s 2, consonant with the orders of the Central Government.

However, as a way out the Supreme Court directed that the proposal as mooted by the Collector and approved by his action, together with the

objection of the Conservator of Forests be sent by the former to the Central Government u/s 2 of the Act and the Central Government on receipt

of such proposal act in accordance with the provisions of the Act and the Rules and the Collector shall thereafter abide by the orders of the

Central Government.

16. In T.N. Godavarman Thirumulkpad Vs. Union of India and others, , the observation of the Apex Court with reference to the meaning if the

word "forest" can usefully be noticed hereunder (at p. 1230 of AIR):

...The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and

therefore, the provisions made therein for the conservation of forests and formatters connected therewith, must apply to all forests irrespective of

the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description

covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest

Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any

area recorded as forest in the Government record irrespective of the ownership.

This is how it has to be understood for the purpose of Section 2

of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must

apply clearly to all forests so understood irrespective of the ownership or classification thereof....

17. Mr. V.T. Gopalan, learned senior Counsel for the first respondent in Writ Appeal No. 645 of 1997 and the third respondent in Writ Appeal

No. 647 of 1997 submitted that the mandatory requirement of prior approval by the Central Government, as prescribed u/s 2 of the Act has not

been complied with and that therefore the order impugned in the Writ Petitions is liable to be quashed. He also submitted that the writ petitioner,

viz., K.V. Shanmugam and the public interest litigant, viz., Ponnusami had the necessary locus standi to challenge the impugned Government

Order, granting lease in favour of M/s. Golden Granites. He further submitted that the impugned order granting lease is not in accordance with Rule

39 of the Rules, even on the face of it and the impugned order has been passed on a total non-application of mind. Inviting our attention to

Sections 2 and 3(a) of the Act, Mr. V.T. Gopalan, learned senior Counsel cited various decisions of the Supreme Court as also of the other High

Courts to emphasise that since the prior approval of the Central Government is mandatory, there cannot be any deviation.

18. Mr. V. Selvaraj, learned Counsel for the third respondent in Writ Appeal No. 646 of 1997 (viz., Ponnusami, public interest litigant), while

adopting the arguments of Mr. V.T. Gopalan, learned senior Counsel has submitted that the writ petitioner Ponnusami is a practising Advocate and

also a member of the Tamil Nadu State Legislative Assembly and he filed the public interest litigation being a member of the Legislative Assembly,

representing the Dharmapuri Constituency, since according to him, the Authorities have no power to grant lease in favour of the third respondent to

exploit granites in a reserved forest. He further submitted that u/s 2 of the Act, the State Government or any other Authority shall not make any

order relating to use of the forest land for any non-forest purposes and that the impugned Government order in G.O. No. 119, dated 5-5-1995

has been issued for extraneous consideration and it is not a case of genuine exercise of power under Rule 39 of the Rules. He further submitted

that the Government have no power to pass an order of that nature without obtaining prior concurrence from the Central Government. From a reading of the impugned order itself, it is seen that the Chief Conservator of Forest himself had stated that only with the prior approval of the Central Government any lease can be granted. Therefore, he submitted that the Government have passed the impugned order in a vindictive manner to favour the grantee in gross abuse of the power vested in it under Rule 39 of the Rules. Mr. Selvaraj, learned Counsel cited *State of Bihar and others Vs. Subhash Singh*, wherein the Supreme Court has held as follows (Para 3):

...In our democracy governed by the rule of law, the judiciary has expressly been entrusted with the power of judicial reviews as sentinel in *qui vive*. Basically judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to *etat dedroit*, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the constitution and within the limits set by the law i.e., constitutionalism....

...It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules where judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is there in built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if some one else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The Controlling Officer holds each of them responsible and the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law.

19. In *Shiv Sagar Tiwari v. Union of India* AIR 1997 SCW 2697, a practising Advocate of the Supreme Court claiming himself as a vigilant citizen filed the petition under Article 32 of the Constitution of India, having read a news item published in Indian Express of 5-9-1994 under the caption

"Chirag Tale Andhera" (darkness under the lamp). The scheme relates to large scale out of turn allotments. While deprecating the practice of out of turn allotment, the Supreme Court gave comprehensive directions to the Authorities concerned. The Supreme Court has observed that when grave illegality of great magnitude is required to be cured, at times sort of surgery becomes absolutely necessary and the suffering cannot be avoided altogether. Finally, the Supreme Court has observed that they hope that coming years would not see any scam or misuse of power in making allotments of Government quarters. The trust which is reposed in this context on high public functionaries would be discharged, only to advance the object of providing of suitable condition of work to Government employees so that the Government is run on a even keel; and shelter, which is a very pressing necessity of any human being, would not come to be denied, if the same is otherwise due to the incumbent.

20. The decision reported in Union of India v. Sushil Kumar Modi AIR 1997 SCW 69 relates to a large scale misappropriation of public funds in

Government Department to the extent of several hundred crores of rupees by indulging into fraudulent transactions and falsification of Accounts in

the Animal Husbandry Department in the State of Bihar over a long period, which has come to be known as "Fodder Scam". The High Court by

an order, dated 11-3-1996 directed the investigation to be entrusted to the Central Bureau of Investigation. Aggrieved by the Order of the High

Court Civil Appeals were filed before the Supreme Court of India. The Supreme Court gave directions and directed the CBI to take up the

investigation already made by the State Police, inclusive of the FIRs, arrests and attachments and deal with the matter appropriately. Pursuant to

the above order of the Court, the CBI has been reporting the progress of the investigation to the Chief Justice of the Patna High Court. The

Division Bench of the High Court by order, dated 7-10-1996 observed that the Director of the CBI was trying to interfere with the investigation

and if that was allowed to go on, a fair, honest and complete investigation would not be possible. Appeals were preferred against the order of the

High Court. The Supreme Court in paragraph 11 of the Judgment has observed as follows:

...We deem it proper to emphasise that every officer of the CBI associated with the investigation has to function as a member of a cohesive team

which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasise that the exercise has to be performed objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the "rule of law" preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every state action to avoid violation of the "right to equality" guaranteed in Article 14 of the Constitution.

In paragraph 14 of the Judgment, the Supreme Court has observed as follows:

It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the CBI

and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the chargesheet in the competent

Court, according to the ordinary procedure prescribed by law. Care must, therefore, be taken by the High Court to avoid making any observation

which may be construed as the expression of its opinion on merits relating to the accusation against any individual.

21. In the decision reported in *Sheela Barse Vs. Union of India (UOI) and Others*, the Supreme Court has observed that the grievance in a public

interest action, generally speaking, is about the content and conduct of governmental action in relation to the constitutional or statutory rights of

segments of society and in certain circumstances the conduct of governmental policies. Necessarily, both the party structure and the matters in

controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the

emerging situations. The proceedings do not partake of pre-determined private law litigation models but are exogenously determined by variations

of the theme. In a public interest litigation, unlike traditional dispute-resolution mechanism, there is no determination or adjudication of individual

rights.

22. The decision in *State of Bihar and another Vs. Ranchi Zila Samta Party and another*, was cited by Mr. Selvaraj for the proposition that the

excise of the power under Article 226 of the Constitution of India in a public interest was not to give any advantage to political party or group of

people as apprehended by counsel for the appellants in that case. It was also not

to cast a slur on the State Police. It was done to investigate

Corruption in public administration, misconduct by the bureaucracy, fabrication of official records and misappropriation of public funds by an

independent agency that would command public confidence. Therefore, it does not call for any interference.

23. The decision of *Common Cause, A Registered Society Vs. Union of India (UOI) and Others*, relates to allotment of petrol pumps made by

Minister of State for Petroleum and Natural gas without inviting any application. The allottees were the relations of his personal staff and members

of oil selection boards and sons of Ministers. There was no evidence to show that any guidelines were observed while making allotments. The

Supreme Court held that the allotments made were arbitrary and mala fide. The Supreme Court further held that any procedure laid down by

Government must be transparent, just, fair and non-arbitrary. The Supreme Court also has observed that it is high time, that the public servants

should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. With the change in socio-

economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of Government

wealth in various forms. If a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an

individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an

order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner

which is arbitrary. Placing strong reliance on the judgment in *Common Cause, A Registered Society Vs. Union of India (UOI) and Others*, , Mr.

Selvaraj, learned Counsel for third respondent in Writ Appeal No. 646 of 1997 requested that severe action must be initiated against the public

servants, who were responsible for passing the impugned order and they must also be held personally liable for such acts.

24. On the above pleadings and bur discussions and the Judgments cited by either party, the following points arise for determination in all the

above appeals:

(a) Whether the requirement of prior approval by Central Government as

prescribed by Section 2 of the Act is mandatory as well as pre condition for the grant of lease for the forest lands for non-forest purpose;

(b) Whether the Writ petitioners/respondents in the Writ Appeals have the locus standi to challenge the impugned Government Order, granting the

lease; and

(c) Whether it is necessary to go into the inter se dispute between the writ petitioner, K.V. Shanmugam and the respondent grantee. M/s. Golden

Granites.

25. The subject-matter of the controversy in all three Writ Appeals is the Government Order, viz., G.O. 3D No. 119 (Industries (E2) Department, dated 5-5-1995. The said Government Order reads thus:

Industries (E 2) Department

G.O. 3D No. 119 Dated 5-5-1995

Read:

1. G.O.Ms. No. 97 (Industries (MMB1) Department, dated 8-3-1993.
2. From the Supreme Court of India Order, dated 25-11-1994 in S.L. to Appeal (Civil) No. (a) 14091-14102/94.
3. From the High Court, Madras, Judgment, dated 17-3-1995 in W.P. No. 19868/94 etc.,
4. G.O. (2D) No. 52 Industries (MMB1) Department, dated 10-3-1995.

Read also

5. Application of Tvl. Golden Granites, Kaveripattinam, dated 9-9-1994.
6. From the Principal Chief Conservator of Forest Madras, Lr. No. H/44596/93, Dated 27-6-1994.
7. From the Collector Dharmapuri Lr. No. 167/95 (B Mines) dated 25-4-1995.
8. From the Director of Geology and Mining Lr. No. 5434/81/95, dated 10-4-1995.
9. From the High Level Committee report, dated 30-4-1995.

ORDER

Tvl. Granites, Kaveripattinam have applied for lease for quarrying black granite in Badanavadi Reserved Forest in Bit No. 5 over an extent of 6.60

acres of Government Reserve Forest land in Pennagaram Taluk, Dharmapuri District under Rule 39 of the Tamil Nadu Minor Mineral Concession

Rules, 1959.

2. The Principal Chief Conservator of Forest Madras, has reported that the land applied for has been classified as Reserved Forest and that the

lease may be granted after obtaining prior approval from the Central Government u/s 2 of the Forest (Conservation) Act, 1980.

3. The District Collector, Dharmapuri has forwarded the technical report. It has been reported that the area under reference is the forest land and

is free from habitation etc.

4. The Director of Geology and Mining has informed the Government to process the application treating it as a fresh lease application.

5. According to Rule 39 of the Tamil Nadu Minor Minerals Concession Rules, 1959, the State Government if in any case, area of the opinion that

in the interest of mineral development and in the public interest, it is necessary so to do, they may, by order and for the reason to be recorded grant

or renew a lease or permission to quarry any mineral. In view of the Judgment of the Supreme Court of India in SLP (C) No. 14091-14102/94,

dated 25-11-1994 and the direction of the High Court, Madras in W.P. No. 19868/94 etc., dated 17-3-1995, the Government have to consider

all the applications under Rule 39 and pass orders on them within a reasonable time. The Government have therefore, decided to consider the

pending applications for grant of quarrying lease in Government poramboke lands under Rule 39 of the Tamil Nadu Minor Mineral Concession

Rules, 1959. The Government have constituted a High Level Committee with technical guidance in order to consider and give suitable

recommendations on the requests following certain guidelines and norms.

The High Level Committee after scrutinising the application of Tvl. Golden Granites with technical guidance has recommended for grant of lease to

quarry granites on the Government Reserve Forest land.

6. In view the recommendation of the High Level Committee and in the interest of mineral development and in the public interest, as per Rule 39 of

the Tamil Nadu Minor Mineral Concession Rules, 1959 the Government have decided to grant lease to quarry in the Government Reserved Forest

land to Tvl. Golden Granites.

7. In exercise of powers conferred under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 the Governor of Tamil Nadu hereby

grants quarry lease to Tvl. Golden Granites for quarrying black granite over an extent of 6.60 acres in Bit No. 5 of Badanavadi Reserved Forest,

Pennagaram Taluk, Dharmapuri District for a period often years, subject to the usual conditions specified in the annexure to this order as per the

sketch enclosed and a special condition that the commencement of quarrying operation should be done only after obtaining concurrence of

Government of India, Ministry of Environment and Forest, New Delhi. This quarry lease is subject to further modifications, additions and

alterations that may be included in the agreement to be executed.

8. The District Forest Officer, Dharmapuri District is requested to take necessary further action for execution of agreement in the prescribed form

and communicate the date of execution of agreement to the Government and Director of Geology and Mining.

(By order of the Governor)

C. Ramachandran,

Principal Secretary to

Government.

26. We have already noticed that the prayer in the three different writ petitions and the rival contentions of the respective parties. The learned

single Judge was pleased to hold that the requirement of prior approval by the Central Government as prescribed by Section 2 of the Act is

mandatory and as such the prior approval from the Central Government is a condition precedent for the grant of lease for the forest lands. In such

circumstances since the prior approval from the Central Government has not been obtained the lease granted to M/s. Golden Granites by the

impugned order issued by the Government of Tamil Nadu requires to be quashed, is the main submission made by the learned Counsel for the writ

petitioners. The learned single Judge has also observed that the impugned order has been passed on a total non application of mind and that both

the writ petitioner viz., K.V. Shanmugam and the public interest litigant Ponnusamy had the necessary locus standi to challenge the impugned

Government Order, granting lease in favour of the firm M/s. Golden Granites. Aggrieved by the said order of learned single Judge, the above three

Writ Appeals have been preferred by M/s. Golden Granites. As rightly pointed out by Mr. V.T. Gopalan, learned Counsel for the third respondent

in Writ Appeal No. 646 of 1997, it is not necessary for us to go into the inter se dispute between the writ petitioner K.V. Shanmugam and the

respondent grantee (M/s. Golden Granites, represented by its partners K.V. Narayanaswami) who are the brothers. It is for them to work out

their rights before the appropriate forum in the manner known to law. It is seen from the pleadings that Civil proceedings are pending before the

other forums. In this case, we are called upon to give our ruling on the question as to whether the requirement of prior approval from the Central

Government as prescribed by Section 2 of the Act is mandatory or not. Therefore, the inter se dispute between the parties need not be decided at

all in this proceeding, which is neither germane nor relevant to the point at issue.

27. The lease in question is in respect of a forest land and as such Section 2 of the Act applies as it is a grant of lease for non forest purpose viz.,

to quarry granite. The above Act was enacted with a view to check the further deprivation of forest station. The Act made the prior approval of

the Central Government necessary for Preservation of reserved forests and for non-trust purposes. The Ordinance also provided for the

constitution of an advisory committee to advise the Central Government with regard to grant of such approval. The main object of the Act is to

prevent deforestation and to check the environmental deterioration. As the deforestation causes serious threat to the existence of human being and-

other living substances, the Act was enacted to check the deforestation. In Rural Litigation and Entitlement Kendra Vs. State of U. P., , the

Supreme Court has observed that when once the importance of forest is realised, preservation of forest is accepted as the goal. Allowing mines in

these areas would not only be violative, but would be detrimental to restoration of forest growth in a natural way in this area. Section 2 of the Act

reads as follows:

Restriction on the Reservation of Forests or Use of Forest Land for Non-forest Purpose:

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 directing

(i) that any 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.

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to authority, corporation,

agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it

for deafforestation.

Explanation:

For the purpose of this section, "non-forest" purposes means breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil rearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation.

but does not include any work relating to or ancillary to conservation, development and management of forests and wild life, namely, the

establishment of checkposts, fire lines, wireless, Communications and construction of fencing, bridges and culverts, dams, waterholds, trench

marks, boundary marks, pipelines or other like purposes.

Section 2 of the Act imposes restrictions on the use of forest land for non-forest purposes and it will not be confined to reserved forests alone. The

Act can have no application to the territories administered by the Central Government. The object of Section 2 of the Act is to give an overall

power reserved to Central Government to supervise the Acts of State Government in respect of the conservation of forest. Since all Acts and

Orders in Union Territory are that of Central Government there can be no question of Central Government passing order with prior approval of

itself. Section 3A of the Act imposes penalty for contravention of the provisions of Section 2 of the Act. The Act applies to renewal of mining lease

as well and even if there was provision for renewal in lease agreement on exercise of lessees option requirements of the Act had to be satisfied

before grant of renewal.

28. In the decision reported in *M.C. Mehta Vs. Kamal Nath and Others*, it has been held that the doctrine of public trust is invoked and applied

by the Courts in India in that all natural resources including forest belonging to the people and that the Government will be the custodian of such

natural resources. In the above case, a private company, Span Motels Private Limited had built a club at the bank of River Beas by encroaching

land including substantial forest land which was later regularised and leased out to the company when Kamal Nath was the Minister. The Supreme

Court took note of the news items because the facts disclosed therein pertain to serious act of environmental degradation on the part of the Motel.

The main allegation in the said news item was that the course of the river was being diverted to save the Motel from future floods. Disposing of the

writ petition, the Supreme Court has held as follows:

The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of

the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust." The Public Trust Doctrine Primarily

rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would

be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available

to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general

public rather than to permit their use for private ownership or commercial purposes....

29. In the instant case both the public interest litigant viz., Ponnusamy and the writ petitioner, K.V. Shanmugam have brought to the notice of this

Court that the Government have violated the mandatory provisions of Section 2 of the Act in regard to the grant of lease to the firm, M/s. Golden

Granites. In the writ petition, several irregularities have also been pointed out by the petitioners with reference to the grant of lease in favour of the

said firm. In our opinion, the principles laid down in *M.C. Mehta Vs. Kamal Nath and Others*, squarely applicable to the facts of the present case.

In that case a news item appeared in Indian Express (English daily) was taken cognizance of by the Supreme Court of India. That was also a case

of prior approval granted by the Government of India, Ministry of Environment and Forest granting lease in favour of a private company, viz., M/s.

Span Motels Private Limited, which had a direct link with the Central Ministry. The Supreme Court in that case took note of the said news item

because of the facts disclosed therein and ultimately held that the resources being a gift of nature, they should be made freely available to everyone

irrespective of the status in life and, that it is the duty of the Government to protect the resources for the enjoyment of the general public rather than

to permit their use for private ownership or commercial purposes. The SLP was entertained by the Supreme Court and the polluter was directed

to pay compensation for the damages caused by his acts. In the instant case, as the grant of mining lease admittedly relates to an area in the

reserved forest, we feel that it is our duty to take cognizance of such facts and circumstances and we have heard the arguments of learned Counsel

appearing for the rival parties at length.

30. That apart, the writ petitioner, K.V. Shanmugam being a prior lessee in respect of the very same land had again applied for grant/renewal of

such lease either to the Forest Department or to the State Government. He will certainly be the person aggrieved to challenge the Government

order, granting lease in favour of the firm, M/s. Golden Granites. We have already held that the inter se dispute between the parties viz., the writ

petitioner, K.V. Shanmugam and the grantee of the lease, M/s. Golden Granites represented by its partner, K.V. Narayanaswami, who are the

brothers could not be decided in these proceedings for the grant of lease by the Government. We have therefore reserved their rights to be

worked out in a separate suit or any other appropriate proceedings before the appropriate forum. Such a dispute cannot be decided in a writ

petition under Article 226 of the Constitution of India. Inasmuch as the lease pertains to forest land for the grant of which Section 2 of the Act is

attracted, this Court has every jurisdiction to go into the validity of such lease when once it is brought to the notice of this Court that the mandatory

requirement of Section 2 of the Act has not been complied with. In the instant case, both the, writ petitioners, viz. K.V. Shanmugam and the public

interest litigant, viz., Ponnusamy have brought to our notice that the requirement of prior approval by the Central Government as prescribed by

Section 2 of the Act, which is mandatory as well as pre-condition for the grant of lease for the forest lands for non-forest purposes having not been

complied with by the State of Tamil Nadu, the order impugned in the writ petitions is liable to be set aside. As we have already noticed the public

interest litigant, viz., Ponnuswamy is a practising Advocate and he is also a member of the State Legislative Assembly from the Dharmapuri

Constituency in which area the disputed land and the quarry are situated. In our opinion, he has every right to maintain the writ petition in this

Court, he being the elected/selected representative of the area in question. Thus, we answer questions (b) and (c) in favour of the respondents in

the writ appeal and against the appellants.

31. Point-A:

A mere reading of Section 2 of the Act clearly shows that prior approval of the Central Government is mandatory as well as a pre-condition of the

grant of lease of forest lands for non-forest purposes. That a mining lease is a non-forest purpose, admits of no doubt. The impugned order states

that the grant would be subject to a special condition that the commencement of quarrying operation should be done only after obtaining

concurrence of Government of India, Ministry of Environment and Forest, New Delhi. The said special condition on the face of it, is not in

conformity with the requirement of Section 2 of the Act in that it totally fails to give effect to the word ""prior,"" ""approval"" and stated that quarrying

operations should be commenced only after the concurrence of Government of India, thereby defeating the object of the word ""prior"" and making

the same otiose and redundant. It is the golden principle of interpretation of law that the expressed intention of the statute must be given its full

effect and that such an expressed intention should not be tinkered with, by introducing something which runs counter to the said intention. What has

been done by the Government in the impugned Government order is to make the prior approval of the Central Government as a post approval by

the Central Government.

32. The prior approval of the Central Government is an essential pre-condition, as laid down by the Apex Court in the following decisions cited by

Mr. V.T. Gopalan, learned senior Counsel for the respondents. In the decision reported in *Ambica Quarry Works v. State of Gujarat and Ors.*,

(1987) 1 SCC 213 it has been held as follows:

The said section makes it obligatory for the State Government to obtain the permission of the Central Government for (1) dereservation of

reserved forest and (2) for use of forest land for non-forest purposes. It is apparent, therefore, that (the two dual situations were intended to be

prevented by the legislation in question, namely dereservation of reserved forest, and use of forest land for non-forest purposes. (para 7)

In that view of the matter and the scheme of the Act, in our opinion, the respondents were right and the appellants were wrong. All interpretations

must subserve and help implementation of the Intention of the Act. This interpretation, in our opinion, will subserve the predominant purpose of the

Act. (para 20)

33. In the decision reported in Rural Litigation and Entitlement Kendra Vs. State of U. P., , the Supreme Court held that the requirement of

obtaining approval of Central Government u/s 2, a mandatory condition precedent to grant as well as renewal of mining leases in forest area.

34. In the decision reported in Tarun Bharat Sangh v. Union of India 1993 Supp (3) SCC 115, the Supreme Court has held as follows:

Once an area is declared as a protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land

within the meaning of Section 2. The effect of this position is that no non-forest activity can be carried on in the said area except with the prior

approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior

approval. That the mining activity amounts to non-forest purpose is beyond dispute. Thus, the grant of mining leases/licences and their renewal by

the State Government, without obtaining the prior approval of the Central Government, in respect of the mines situated within the protected forest,

after January 1, 1975 is contrary to law. (para 18)

35. The next decision cited by Mr. V.T. Gopalan, learned senior Counsel for the respondents is the one reported in State of M.P. and Others Vs.

Krishnadas Tikaram, . That is a case of mining lease to extract limestone in forest area and the State Government decided to renew the lease for

20 years in terms of the original grant in favour of the respondent. But, prior approval of the Central Government was not obtained. Pursuant to the

objection raised by the Forest Department, renewal order was cancelled by the State Government and the said cancellation order was challenged.

The Court held that the prior approval of the Central Government u/s 2 is mandatory and in the absence of the prior approval, cancellation of the order of renewal, before it came into effect by registering, had been properly made by the appellant-State.

36. The next decision cited by Mr. V.T. Gopalan is the one reported in Divisional Forest Officer and Others Vs. S. Nageswaramma, . In that

case, during the subsistence of lease to extract minerals within forest area, Forest (Conservation) Act came into force. The lessee was operating

the same even after the expiry of the lease without any prior concurrence of the Central Government as required u/s 2 of the Act requiring prior

permission of the Central Government as a condition precedent for lease by State Government. Hence the lease was cancelled. The High Court

took the view that the lease was valid therefore, directed the lessee to carry on extraction of only the stacked material from the surface of the earth

in the forest area. The Supreme Court held that in view of the total prohibition u/s 2 of the Act, the respondent had no right to continue operation in

the area and has also observed that the directions given by the High Court were erroneous.

37. In the decision reported in Shri Lakshmi Chowhan and Others Vs. State of Assam and Others, a Division Bench of the said Court held that

Section 2 of the Act places a restriction on the State Government or other authorities to put any part of the Reserved Forest land or any portion

thereof for any non-forest purpose except with the prior approval of the Central Government. In that case, allotment of land in the Reserved Forest

was made for non-forest use and the said allotment was stayed by the Divisional Forest Officer and the High Court refused to interfere with the

said stay order on the ground that prior approval of the Central Government was not taken for allotment.

38. In the decision reported in Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others, , it has been held by the

Supreme Court that the order sanctioning the lease is an order granting lease and the execution of the lease deed was only a formality. Quite apart

from the aforesaid decisions holding the requirement of Section 2 of the Act as regards prior approval of Central Government is mandatory, even a

bare reading of the said provision makes the position very clear.

39. Further, the provisions of Sections 3A and 3B provide for contravention of the provisions of the Act as well as offence by the authorities and

Government Departments. When once the consequence of non-observance of a condition is also provided, then the said condition is mandatory

and there could be no question of countenancing any substantial compliance. The reasons requiring such prior approval even before such grant of

lease is not far to seek. It is absolutely essential that the State Government if it decides to grant the lease in respect of forest land for non-forest

purposes, must first approach the Central Government for its prior approval for grant of such lease and thereafter individual applications for grant

of lease have to be taken up and considered, as otherwise it will open the door for corruption, manipulation and neptism as has been held by the

Supreme Court in respect of a stage carriage permit under the Motor Vehicles Act in the decision reported in *R. Obliswami Naidu Vs. The*

Additional State Transport Appellate Tribunal, Madras and Others, in which the need for grant of permit should first be determined and, thereafter

only the applications must be taken up and considered. In the said decision, the Supreme Court has observed in paras 4 and 5 of its judgment as

follows:

4. Sub-section (3) of Section 47 of the Act requires the Regional Transport Authority to limit the number of stage carriage permits that may be

granted in a route having regard to the matters mentioned in Sub-section (1) of that section. The question for determination is whether the

determination as to the number of stage carriages required on a route should be done at a stage anterior to that of entertaining application's for

stage carriage permits or that it could be done at the time it considers applications made by operators for stage carriage permits in that route. The

R.T.A. has proceeded on the basis that that question can be decided While considering the applications made to it for permits by operators

whereas the Appellate Tribunal and the High Court have taken a contrary view.

5. Sub-section (3) of Section 47 of the Act if read by itself does not throw any light on the controversy before us but if Sections 47 and 57 of the

Act are read together it appears to us to be clear that the view taken by the Appellate Tribunal and the High Court is the correct view. If contrary

View is taken, it will throw open the door for manipulations and nepotism. There may be possibility of the personality of the applicant influencing

the decision of the R.T.A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main

consideration while taking a decision u/s 47(3) may suffer. If we accept the view taken by the R.T.A. as correct, an operator, who happens to

apply for the route first will be in a commanding position. The R.T.A. will have no opportunity to choose between competing operators and hence

public interest might suffer.

40. The decision reported in Sharif-ud-din Vs. Abdul Gani Lone, was cited by Mr. V.T. Gopalan. The above case arose under the Jammu and

Kashmir Representation of the People Act, 1957. In that case election petitions were not signed by the election petitioner and the Court held that

the requirement u/s 89(3) that copies of election petition shall be attested by petitioner as true copies under his own signature is mandatory and

failure to comply with the requirements renders the petition liable to be dismissed u/s 94(1). The Court also held that the attestation of an advocate

is not sufficient.

41. Therefore, we are of the view that whenever a statute prescribes that a particular act is to be done¹ in a particular manner, and also lays down

that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory.

42. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner

prescribed and not in any other way. It is settled rule of interpretation that where the statute is penal in character, it must be strictly construed and

followed. When a law says that a thing is to be done particularly, it should be done in accordance with the said principles and not otherwise. We

have already noticed that the requirement u/s 2 is mandatory and therefore, non-compliance of the same must result in cancelling the grant made in

favour of the grantee.

43. In the decision reported in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, while considering the

consequences of non-compliance of the mandatory procedure, the Supreme Court referred to two leading cases; (1) Taylor v. Taylor (1875) 1 Ch

D 426 (2) AIR 1936 253 (Privy Council) . In the said judgment, in para 25, the Supreme Court has held as follows:

A century ago, in Taylor v. Taylor 1875 (1) Ch D 426, Jaseel, M.R. adopted the rule that where a power is given to do a certain thing in a certain

way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test

of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) and later by this Court in several cases, to a Magistrate making a

record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object

of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.

The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the

very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is

implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the

purpose of Section 5(3)(b).

44. In the decision reported in D.N. Taneja Vs. Bhajan Lal, , the appeal was filed before the Supreme Court u/s 19(1) of the Contempt of Courts

Act. The appeal was directed against the judgment of the Punjab and Haryana High Court dismissing an application for contempt filed by the

appellant against Mr. Bhajanlal, who was the then Chief Minister of the State. Learned single Judge of the High Court took the view that there

were circumstances to indicate that it was not a fit case in which the Court should exercise its jurisdiction under the Act. In that view of the matter,

the learned Judge dismissed the application and discharged the rule nisi. A preliminary objection was taken by the learned Counsel appearing on

behalf of Mr. Bhajan Lal, to the maintainability of the appeal u/s 19(1) of the Act. It was contended by him that as no punishment was imposed on

the respondent by the High court in exercise of its jurisdiction to punish for contempt, Section 19(1) is inapplicable and the appeal is incompetent.

The Supreme Court held as follows:

There can be no doubt that whenever a Court, Tribunal or authority is vested

with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a Civil Court is conferred with the jurisdiction to decide a suit; the Civil Court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a Court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the Court hears the parties and considers the materials produced before it, and if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

45. Mr. A.L. Somayaji, learned senior Counsel for the appellants placed reliance on the decision of a Full Bench of the Andhra Pradesh High Court reported in *Hyderabad Abrasives and Minerals, Hyderabad Vs. The Govt. of A.P. Forest Department, Hyderabad and another*, and contended that no mining activity be actually undertaken without the approval of the Central Government and that there could be nothing wrong in granting the lease subject to such special conditions as it is found in the impugned G.O. We have gone through the Full Bench decision of the Andhra Pradesh High Court. In the said decision, the decision of the Supreme Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 and *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, wherein earlier decision of the Supreme Court in *State of Bihar Vs. Banshi Ram Modi and Others*, had been distinguished, was not brought to the notice. Further the said two decisions of the Supreme Court in which earlier decision has been distinguished has also been further

quoted with approval in the recent general order of the Supreme Court

T.N. Godavarman Thirumulkpad Vs. Union of India and others, . The Supreme Court issued general directions and also issued specific directions

to the State of Himachal Pradesh, Jammu and Kashmir, State of Tamil Nadu etc., in view of the great significance of the point involved in this

matter relating the protection and reservation of the forest throughout the country. In this view of the matter and of all the judgments of the

Supreme Court referred to earlier, the Full Bench decision of the Andhra Pradesh High Court cannot be considered to be good law.

46. Mr. A.L. Somayaji, learned senior Counsel appearing for the appellants next relied on the decision reported in Union of India and others Vs.

Kamath Holiday Resorts Pvt. Ltd., wherein direction has been given that the papers should be sent to the Central Government for prior approval.

On the question of interpretation of Section 2 of Forest Conservation Act and the legal principle, the Supreme Court was pleased to again affirm

that grant of lease without prior approval of the Central Government would be illegal and the said direction of the Supreme Court was with

reference to the particular facts. It cannot therefore be said that in view of the aforesaid several decisions of the Supreme Court and of this Court,

the order of the learned Single Judge quashing the impugned G.O. granting the lease in favour of Golden Granites is in any way vitiated and the

order of the learned single Judge is the only order that could be made in the peculiar facts and circumstances of the case. In the impugned order

except stating that the High Level Committee had recommended the grant of lease to quarry granite on the Government forest land, no other

reasons had been given by the Government in the impugned G.O. except making a repetition of Rule 39 that in respect of mineral development and

in public interest, the Government have decided to grant the lease. Such order of Government could hardly be termed as a reasoned order made in

exercise of powers under Rule 39. The Supreme Court in the decision reported in Premium Granites and Another Vs. State of Tamil Nadu and

Others, held Rule 39 to be valid but at the same time made it clear that individual orders made by granting lease under Rule 39, could be

challenged if such order is not in conformity with Rule 39. In fact it was brought to our notice that the Government have passed the impugned G.O.

in spite of the objections of the Principal Chief Conservator of Forest, Madras, that the lease could be granted only after obtaining prior approval of Central Government. Despite the fact that this position in law has been brought to the notice of the Government by the Principal Chief Conservator of Forest, the Government has not chosen to follow the said mandate. The argument of the writ appellant that the order of Kanakaraj, J., in the above said writ petition set a time limit for the disposal of applications under Rule 39 for grant of lease and that the said time limit had to be adhered to, as such there was no time to get the prior approval of the Central Government cannot at all be a ground for issuing the G.O. in favour of the grantee. This apart, the application of Golden Granites was not made under Rule 39, as it was made earlier to Rule 39. If for any reasons, further time was found to be necessary, the Government should have approached the Court for extension of time. The order of Kanakaraj, J., prescribing the time limit cannot be taken to be a cover or the justification to violate or get over the mandatory provisions of Section 2 of the Act. The Central Government is very categorical in its stand as could be seen from their counter-affidavit in W.P. No. 8845 of 1995 in para Nos. 3, 4 and 5 wherein it is stated that the prior approval of the Central Government contemplated under the Act is a condition precedent to the grant of any mining lease for non-forest purposes and that such prior approval must be obtained with reference to a particular forest land in question which should also be acceptable to the Central Government and only on such prior approval being granted by the Central Government the question of granting the mining licence for that land to any individual will arise. The said stand of the Central Government, in our view is also in conformity with the various rules referred to above by us in this judgment.

47. The Forest Conservation Act, 1980 came into force on 25-10-1980 and it applies to the whole of India except for State of Jammu and Kashmir. A perusal of the above quoted provisions of the Forest Conservation Act clearly shows that without prior approval of the Central Government under the Act, the State Government has no power to dereserve any reserved forest or allow use of forest land for any non-forest purposes. The above provision also shows that the Forest (Conservation) Act, 1980 supersedes all other Acts in the matters pertaining to any

forest land i.e., any land recorded as "Forest" in Government records. The explanation added to Section 2 of the Act shows that the expression

non-forest purpose has been given wider meaning and it comprehends within its ambit all purposes other than reafforestation. Hence as mining on

forest land a non-forest activity prior approval of the Central Government is required before leasing or renewing the lease of forest land for such a

purpose. The Ministry of Agriculture vide Circulation No. 3-2/82-FRy (CONS) dated 26-3-1982 had clarified that prior approval of the Central

Government is essential not only for grant of fresh mining lease but also for renewal of existing mining lease in a forest area, which has been

reiterated from time to time in the various guidelines and clarifications issued by the said Ministry, wherein it has been clarified time and again that

prior approval of the Central Government is essential not only for grant of fresh mining lease, but also for renewal of an existing mining lease in a

forest area, it applies to even such cases where mining is to be continued in an already broken up area. It is clear from Circular No. Z-1/62 dated

26-3-1982 that mining/quarrying of granite in a reserved forest is a non-forestry activity and requires the prior approval of the Central Government

under Forest (Conservation) Act, 1980.

48. Mr. A.L. Somayaji, learned senior Counsel for the appellants submitted that all the citations pointed out by the writ petitioners in W.P. Nos.

8505 and 8845 of 1995 deal with the grants which have been made without any recourse to the Section 2 of the Forest Conservation Act

whereby grantees has been permitted to carry on non-forest activities to exploit the minerals without any recourse to the various provisions of the

Forest Conservation Act, 1980. All the grants have been held to be in violation of Forest Conservation Act, 1980 and the on going non-forest

activities were prevented. According to him, the present impugned grant specifically takes care of the provisions of Section 2 of the Forest

Conservation, which requires the approval of the Central Government before commencement of quarrying operations. Thus the impugned grant is

totally different from the grants in the subject-matter of the decisions of Supreme Court of India that have been cited by the writ petitioners.

49. The decision of the Supreme Court reported in T.N. Godavarman Thirumulkpad Vs. Union of India and others, was relied on by the writ

petitioners. With reference to the said decision, Mr. A.L. Somayaji, learned senior Counsel appearing for the appellants herein submitted that the

said dictum of the Supreme Court only laid down that there shall be a complete ban of the felling of trees in forest area and that the same however

cannot, apply to the instant case. The trees which have not been planted and are in areas which were not in forest area but were cleared for any

reason. The said order of the Supreme Court does not apply on the facts and circumstances of the instant case. It is also submitted by Mr. A.L.

Somayaji, learned senior Counsel that the ongoing activity in Forest area without the approval u/s 2 of the Forest (Conservation) Act has been

ordered to be stopped by the above referred to Supreme Court judgment. Continuing further, Mr. A.L. Somayaji submitted that as the impugned

G.O. itself stipulates that the mining operation should commence only after obtaining permission of Central Government and that there is no mining

or any non-forest activity ongoing in the subject quarry lands even after the execution of lease deed on 19-5-1995 on the facts and circumstances

of the case as no non-forest activity or any other activity is being carried on by the; grantee and as such the same does not have any application to

the facts and circumstances of the case cited by the petitioner. It is also submitted that to the knowledge of the appellants herein, no other

judgments of any Court particularly deals with specifically Section 2 of the Forest (Conservation) Act except the judgment of the Full Bench of

A.P. High Court dated 26-12-1989 in Writ Appeal No. 147/1986 which specifically deals with the scope and interpretation of Section 2 of the

Forest (Conservation) Act and the relevant point of time is material for the purpose of the approval of the Central Government as required u/s 2 of

the said Act.

50. According to Mr. A.L. Somayaji, learned senior Counsel for the appellants herein, the subject land cannot be termed as Forest Land, u/s 2 of

the Forest (Conservation) Act as it is void of any vegetation and much less Forest growth as per the dictum of the Bombay High Court reported in

Parisar an Organisation and Others Vs. State of Maharashtra and Others, . The said judgment also deals with the scope of Public Interest

Litigation wherein it has been held that it is only where the Government action and its violation is such as to shock the judicial conscience so that

the Court should interfere and not otherwise; on the facts and circumstances of the instant case, the State has not done any act or deed in granting

the lease which can be termed as to shock any conscience, much less the judicial conscience. It was further submitted by the learned senior

Counsel that judicial conscience does not warrant the interference under Public Interest Litigation as the lease has been granted only in respect of

rock bearing area which was quarried over twelve years till 1987 when no public grievance was aired in any manner even after the introduction of

the Forest (Conservation) Act, and even for such area a special condition has been imposed in the G.O. in the interest of Section 2 of the Act to

obtain concurrence of the Central Government before commencement of mining operations. Placing reliance on the above judgment, Mr. A.L.

Somayaji, learned senior Counsel contended that the definition of forest and non-forest land have been discussed in the aforesaid judgment and

that clearly shows that the Reserve Forest comprises of forest land as well as waste land, and that on the facts and circumstances of the case, the

grant has been made only in respect of forest land which is void of vegetation and which cannot sustain any afforestation but only a rocky area

and as such provisions of Section 2 of the Act has not been violated in the instant case.

51. Continuing his reply, Mr. A.L. Somayaji, learned senior Counsel for the appellants herein submitted that the grantee firm had made the

application for grant of lease under Rule 8A of TMMC Rules 1959 on 18-1-1993 and after, the special Rule 39 was introduced on 8-3-1993, the

appellant by letter dated 6-4-1993 requested the D.F.O. the concerned authority to consider the pending application dated 18-1-1993 under Rule

8A and Rule 39 as well. According to the learned senior Counsel, this fact is borne out by a relevant letter addressed to this appellant firm by the

District Forest Officer who is the application receiving authority as per rules in letter dated 16-4-1993.

52. We are unable to countenance the arguments advanced earlier by Mr. A.L. Somayaji, learned senior Counsel for the appellants herein and

also by way of reply made subsequently. In this case the point arises for determination is whether the requirement of prior approval by the Central

Government as prescribed by Section 2 of the Act is mandatory as well as pre-condition for the grant of lease of the forest lands for non-forest

purpose and as to whether the respondents in the writ appeals/writ petitioners have locus standi to challenge the impugned G.O. granting the lease.

In support of the contention that the requirement of prior approval by the Central Government is mandatory as well as a condition precedent, the

learned Counsel for the respondent herein cited various decisions of the Supreme Court and other High Courts, which are in out opinion directly

on this point. We are at the same time, unable to accept the arguments of Mr. A.L. Somayaji, learned senior Counsel for the appellants herein that

those decisions are not of any assistance to the point at issue in these writ appeals. We are of the view that the ratio of any decision must be

understood in the background of the facts of the case. In our opinion, the ratio of the decisions cited by the respondents in these appeals does

apply to the facts and circumstances of the impugned Government order. It has been established beyond any doubt that the Government of Tamil

Nadu have completely ignored and failed to get the prior approval of the Central Government and that the effect of the impugned order has only

made the prior approval of the Central Government as a post approval by the Central Government. Therefore, we answer point (a) in favour of the

respondents and against the appellants herein.

53. In conclusion, we say that the impugned order dated 5-5-1995 itself is the out-come of ingenious abuse of powers conferred upon the State

Government and illustrate a glaring and colourable exercise too. Section 2 of the Forest (Conservation) Act, 1980 imposes a blanket bar by

enacting that 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 directing dereservation of any reserved forest or the use of any forest

land or any portion thereof for any non-forest purpose. The Supreme Court has also held as early as in Rural Litigation and Entitlement Kendra

Vs. State of U. P., that in view of the embargo imposed under the said Act, mining in the forest area is not permissible and forest area does not

mean merely reserved forests alone. In this case, admittedly, the area comprised is in a reserved forest. In spite of the indisputable position of law,

it is not only surprising but startling to find that the lease has been directed to be granted with a pretended special condition that the commencement

of the quarrying operations should be done only after obtaining the concurrence of the Government of India. The concurrence to be obtained is a

condition precedent for the grant itself and not a matter for post fact approval. The embargo imposed u/s 2 upon the powers of the State

Government or any other authority interdicts the same from even granting an order and such a prohibitory mandate could not be (sic), short-

circuited or undermined by the machinations and manipulations of the State Government or any authority for that purpose in schemingly passing an

order with a diabolical design to defeat the laudable public interest conserved and protected under the Act of Parliament with positive

determination. The impugned order therefore, in our view, is a result of a blatant and patent transgression of law and smacks of sinister motives and

ulterior objects and that the same has not been passed in the public interest.

54. For all the foregoing reasons, we are of the opinion that the order impugned in these writ appeals does not call for any interference and

therefore, the writ appeals are liable to be dismissed.

55. In the result, 1) all the three writ appeals are dismissed and the order of the learned single Judge quashing G.O.Ms. No. 119 Industries (E-2)

Department dated 5-5-1995, is hereby confirmed; 2) the respondents 1 to 4 in W.P. No. 8505/95 are hereby directed to consider the grant or

lease or renewal in favour of the writ petitioner therein viz., K.V. Shanmugam and to dispose of the renewal application of the said petitioner dated

9-5-1994 in accordance with law; 3) in view of the order passed quashing the G.O.Ms. No. 119 dated 5-5-1995, the lease agreement dated 19-

5-1996 executed by the District Forest Officer, Dharampuri District, Dharampuri in favour of M/s. Golden Granites, Kaveripattinam, Dharampuri

District in respect of quarry measuring 6.6. acres in Bit No. 4 of Badanavadi Revenue Forest, Sunjalnatham village, Pennagaram Taluk,

Dharampuri District registered as document No. 662/95 in the Sub-Registrar Office, Pennagaram is hereby declared as null and void; and (4)

there will be no order as to costs.