
(1979) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5085 of 1977

Kalki Subbarami Reddy

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 27-09-1979

Acts Referred:

Mineral Concession Rules, 1960 — Rule 22, 24, 24(1), 54

Citation : AIR 1980 AP 147 : (1980) 1 APLJ 117

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : P. Krishna Reddy, for the Appellant; Additional Central Government Standing counsel and Government Pleader for Industries, for the Respondent

Judgement

P.A. Choudary, J.—This matter arises under the Mines and Minerals (Regulation and Development) Act, 1957. The petitioner made an application to the Government of Andhra Pradesh on 22-7- 1975 under the aforesaid Act seeking grant of a mining lease for mica over an extent of Ac. 20- 05 cents in Kalichedu village. Rapur Taluk, Nellore District. This application of the petitioner was made under the Mineral concession Rules, 1960 made under the aforesaid Act. Rules requires the State Government to "dispose of the application within twelve months from the date of its receipt". Where the State Government rejects an application for grant of a lease, Rule 54 of the aforesaid Rules provides for a revision to the Central Government within three months from the date of the communication of the order refusing to grant the lease. The Statute added an Explanation to R. 54. This Explanation deals with a situation where the State Government keeps the application for the grant of a mining lease without disposing of it either by granting or refusing to grant the lease within the aforesaid period of twelve months. The aforesaid period of twelve months. The aforesaid Explanation treating such an inaction on the part of the Government as amounting to refusal to grant a mining lease, permits the aggrieved party to make a revision to the Government under the aforesaid R. 54.

2. The petitioner's application dated 22- 7- 1975, was not disposed of within the aforesaid statutory period of twelve months. The petitioner therefore, acting under the aforesaid Explanation to Rule 54, preferred a revision to the Central Government on 30- 9- 1976. This revision was allowed by the Government of India on 5- 10- 1976, with a direction to the State Government to dispose of the petitioner's application dated 22- 7- 1975 within hundred days. But, however strange it may look, the state Government had once again failed to dispose of the petitioner's application within the period of hundred days. But, however strange it may look, the State Government had once again failed to dispose of the petitioner's application within the period of hundred days. The State Government has clearly disobeyed the directions of the Central Government dated 5-10-1976. In those circumstances, the petitioner had once again preferred a second revision to the Central Government on 4-4-1977. The Central Government by its order dated 21-7-1977 had allowed this revision and directed the State Government to grant a mining lease for mica over an area of Ac. 20.05 cents in Kalichedu village, to the petitioner for a period of twenty years. But the State Government which is the authority to grant the lease had once again refused to obey the orders of the Central Government. The petitioner now seems to be means of this Writ petition (Sic) with a direction to the State Government to implement the order passed by the Central Government on 21-7-1977 by executing a lease in his favour with respect of the aforesaid Ac. 20-05 cents in Kalichedu village. Unfortunately in this case, neither the State Government nor the Central Government filed any counter. I have therefore received no assistance whatsoever from the parties who are greatly interested in the adjudication of this matter. Mr. Krishna Reddy, the learned Counsel for the petitioner argued that inasmuch as the Central Government had allowed the second revision, the State Government is bound by that order and that it would be wholly proper for this Court to enforce obedience of this order of the Central Govt. by the State Govt. I have no manner of doubt that an unlawful defiance by the State Govt. of an order made by the Central Govt. would gravely imperil the Federal character of our Union. Article 356 of the Constitution treats such a defiance "as a failure of Constitutional machinery in the State". The only question therefore that arises for my consideration in this case is whether the Central Government acted within the constitutionally appointed limits of its authority in entertaining the petitioner's second revision dated 4-4-1977 and allowing it by its order dated 21-7-1977?

3. As I have already noted, while Rule 22 of the Mineral Concession Rules, 1960, contemplates receiving of applications from parties and Rule 24 deals with the question of disposal of those applications, it is only the Explanation to R. 54 that provides for what may be called "a deemed rejection of the applications" filed under Rule 22 if the Government fails to dispose of under Rule 24. For the reasons which we need not hazard to guess, the law does not provide for any other situation of a deemed rejection. The law provides for a right of revision under Rule 54 only against the first "deemed rejection". It follows therefore that

the Statute did not provide for the entertainment of a second revision against a second deemed rejection by the State Government. It is well known that a revision, like an appeal, is a creature of the Statute and such a right if it were to be available, must be provided for by the law. Inasmuch as the Statute has not contemplated a second deemed rejection and has therefore deliberately failed to provide for a revision in such a situation, the petitioner's second revision dated 4-4- 1977 and the orders passed by the Central Government on it on 21-7-1977 are null and void.

4. As the State Government had disobeyed the orders of the Central Government dated 5-10-1976 directing the State Government to dispose of the petitioner's application within hundred days, the petitioner instead of going to the Central Government ought to have asked this Court to compel the State Government to obey the directions of the Central Government. But what the petitioner had done in this case is to treat the failure of the State Government to dispose of his application within hundred days as amounting to a second deemed rejection which, as we have seen above, is not within the contemplation of the law. The provisions of the law providing for a fiction of rejection, cannot be extended ad infinitum. I therefore hold the Central Government's order dated 21-7-1977 as null and void and therefore is incapable of being man dam used by this Court.

5. I accordingly dismiss this Writ Petition. However, in the circumstances mentioned above, I direct the State Government to dispose of the petitioner's application dated 22-7-1975 which is still pending with it, as expeditiously as possible. The Writ Petition is accordingly disposed of. No costs. There shall be no order as to Advocate's fee.

6. Order accordingly.