

(1965) 09 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 988, 989 and 990 of 1964

Kolagada Chennabasappa

APPELLANT

Vs

State Government of Mysore and Others

RESPONDENT

Date of Decision : 16-09-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mines and Mineral (Development and Regulation) Act, 1957 — Section 11 (2), 30

Citation : AIR 1966 Kar 167

Hon'ble Judges : M. Sadasivayya, J;K.R. Gopivallabha Iyengar, J

Bench : Division Bench

Judgement

Sadasivayya, J.

(1) The petitioner is the same person in all these three petitions. He had been granted by the State Government of Madras, a prospecting licence in respect of 200 acres of land in an area known as the N.E.B. Range, Sandur Hills, Karadikolla Forest Range. This area is situated in Sandur Taluk of Bellary District. (At the time when he obtained the prospecting licence in respect of the 200 acres, Bellary District formed part of the former State of Madras. Subsequently, when the Andhra State Act came into force, this part of the Bellary District became integrated with the former State of Mysore. After the reorganisation of the States, the petitioner obtained from the State of Mysore a mining lease (under an order dated 17-9-1957), in his favouring respect of the said 200 acres. (The blue print of the sketch which the petitioner had attached to his application for a mining lease, has been produced by the Government Pleader and has been marked as Exhibit R-8; this sketch shows, the location of the said 200 acres). The petitioner has been carrying on his mining operations, even since, then. In the meanwhile, three persons who are the third respondents in these three writ petitions, filed applications for the grant of prospecting licences in them, in respect of different extents of land, situated in this area. The third respondent in W.P. No. 988/1964 applied on 29-9-1956 for the grant of prospecting license in respect of an extent of 100 acres. The third respondent in W.P. No. 989/64

applied on 2-4-1956 for a the grant of a prospecting licence in respect of an extent of 80 acres. Kotra Gowda, the third respondent in W.P. No. 900 of 1964 applied on 6-12-1957 for a prospecting licence in respect of an extent of 80 acres. The location of these areas in respect of which the said three respondents had filed their applications for the issue of prospecting licences, is shown in the sketch Exhibit R. 7 which has been filed by Mr. Government Pleader. The extent of 200 acres of land in the occupation of the petitioner is also shown in Exhibit R-7. On 23-5-1960, the petitioner made an application as per Exhibit A for the grant a mining lease in his favour in respect of an extent of 10 acres of land. Exhibit R-9 which purports to be a true copy of the sketch which the petitioner had attached to his application as per Exhibit A, shows the location of the said 10 acres. These 10 acres have been shown in Exhibit R-9 as the buffer zone lying to the west of the 200 acres in the occupation of the petitioner, and situated between the said 200 acres and that plot of land in respect of which one Vnganna Chetty is stated to have obtained a mining lease. On 23-8-1961, the Government of Mysore made an order as per Exhibit D, purporting to follow a previous policy decision of 31-12-1957 (as per Exhibit R-4) and the Government ordered that all applications for prospecting licences and mining leases, which were pending (on the date of Exhibit D), be rejected. In the order as per Exhibit D, the Government also further directed the Director of Mines and Geology (hereinafter referred to as the Director to prescribe a time limit of two months for the receipt of fresh applications of prospecting licences and mining lease. In compliance with the said Government order, the Director, by his letter dated 22-12-1961 (Exhibit C), intimated the petitioner that his application as per Exhibit A was rejected. He also further intimated the petitioner that in case the petitioner is interested in obtaining miner concessions over the said area, the petitioner should make a fresh application within a period of two months. Thereafter, in accordance with the intimation conveyed to him under Exhibit C, the petitioner made a fresh application as per Exhibit E dated 24-2-1962, for the issue of a mining lease to him in respect of the said 10 acres. Then, on 17-1-1963 the petitioner filed another application as Exhibit G praying for the grant of a mining lease in respect of the 20 acres of land shown in Exhibit H which is a copy of the sketch annexed to that application. It will be seen from that sketch that the said 20 acres consist of a stretch of land situated towards the west of the 200 acres in the occupation of the petitioner, another stretch toward the south of the said 200 acres and also a block of land situated the about the south-western corner of the corner of the said 200 acres. By the publication as per Exhibit P in the Gazette dated 26-12-1963, each of the three above said persons who had applied for prospecting licence was issued a prospecting licence in respect of extends of land much smaller than what had been prayed for in each of the application for prospecting licences. The third respondent in W.P. No. 988 of 1964 who had applied for a prospecting licence in respect of 100 acres of land, was ordered to be given a prospecting licence in respect of 1.25 acres of land, the third respondent of W.P. 989/1964 who had prayed for the issue of a prospecting licence in respect of 90 acres of land, was

ordered to be granted, prospecting licence in respect of 39.19 acres of land; and Kotra Gowda the third respondent in W.P. 990/64 who had applied for a prospecting licence in respect of 80 acres of land, was ordered to be granted a prospecting licence in respect of only 13 acres of land. The location of these plots of land in respect of which these three persons have been granted prospecting licences under Exhibit P. has been shown in the sketch as per Exhibit R-7. The petitioner is feeling aggrieved at the grant of prospecting licences to the said three respondents, in respect of the said extents of lands, which are all adjacent to 200 acres which are in his occupation. That is why the petitioner has filed these three writ petitions, impleading in each case the respective grantee of the said prospecting licences as the third respondent and the State as the first respondent and the Director as respondent No. 2. He prays for the issue of writ of certiorari or any other appropriate writ or order quashing the grants made under Exhibit P; he also prays for the issue of a writ of mandamus or any appropriate direction requiring respondents 1 and 2 to consider the petitioner's applications as per Exhibit E and G for the issue of a mining lease, on the basis that they were the only valid applications.

The grievance of the petitioner is that by reason of the policy decision of the Government dated 31-12-1957, the three applications for prospecting licences made by Kotra Gowda and the other two respondents-applicants, should have been rejected. It is also alleged by him that the extents of the lands in respect of which prospecting licences have been ordered to be issued under Exhibit P. did not form part of the acres in respect of which the said three persons had applied for prospecting licences. It is also alleged that the Director has acted mala fide and was influenced by a brother of Kotra Gowda who happened to be an M.L.A. The petitioner has further alleged that in granting the said prospecting licences, the authorities have acted in disregard of the relevant provisions of the Act and rules, and in an arbitrary and discriminatory manner so as to offend Article 14 of the Constitution. According to the petitioner the three applications for prospecting licences could not have any legal existence subsequent to the Government order as per Exhibit R-4 dated 31-12-1957 and that the only surviving applications were those of the petitioner as per Exhibits E and G for the issue of mining leases in his favour.

The respondents 1 and 2 have filed a counter affidavit. The third respondent in each of the two writ petitions W.P. Nos. 988 and 989 of 1964 has also filed a counter affidavit; Kotra Gowda the 3registered respondent in W.P. No. 990/1964 has not filed any counter-affidavit.

(2) Before proceeding to deal with the other matters in controversy between the parties, it would be convenient to dispose of the allegations pertaining to mala fides. These allegations are found in paragraphs 11 and 19(c) of the petitioner's affidavit. Having regard to all these circumstances, we have no hesitation in holding that these allegations of mala fides have absolutely no foundation, and in rejecting the same.

(3) In the course of his arguments Mr. Venugopalachari did not attempt to take the stand that any of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, and Mineral Concession Rules, 1960, were contrary to Article 14 of the Constitution. He did not also dispute the fact that the rights and obligations of the persons applying whether for prospecting licences or mining leases, as well as the competence of the specified authorities dealing with the same, would all be as regulated and controlled by the provisions of the Act and the Rules. His contention is that the alleged discriminatory treatment prejudicial to the interests of the petitioner was two-fold. It is stated by the learned Advocate, that firstly, the State Government should have rejected the three applications for prospecting licences in pursuance of the policy decision as per Exhibit R-4, as it did in the case of Exhibit A (the petitioner's application for a mining lease). Secondly, it is argued by him that the grant of these prospecting licences to Kotra Gowda (third respondent in W.P. No.990 of 1964), is in respect of an extent of land not included in the area for which he had applied for a prospecting licence. (This latter contention was not urged in respect of the grants to the third respondents in the other two Writ Petitions.)

It would be convenient to first dispose of the second contention. It was explained to us by Mr. Venugopalachari, that this contention of the petitioner is based on the fact that the extent in respect of which prospecting licence has been granted to Kotra Gowda, does not fall within the area shown in Exhibit F-1, as the disputed area. Ex. F-1 is a sketch which was attached to Ex. F the order or notice dated 17-6-1960, served on the petitioner. It was stated by Mr. Government Pleader during the course of his arguments, that the sketch as per Exhibit F-1 was not quite precise and that there is a mistake therein, in showing the disputed area. According to the sketch Exhibit R-7, which has been produced by Mr. Government Pleader, it is seen that part of the area for which Kotra Gowda had applied for a prospecting licence, extends beyond the Southwestern limits of the 200 acres in the occupation of the petitioner. But, in Exhibit F-1, the disputed areas is shown as if it is wholly within the limits of the 200 acres in the occupation of the petitioner. It was explained by Mr. Government Pleader that this mistake is due to the disputed area having been shown as being further north-wards than it really was, in the area in the occupation of the petitioner. Exhibit F-1 is a small sketch which was incidental to the order in Exhibit F and its main purpose was to apprise the petitioner, of the approximate area in dispute. It was not intended to be a communication to the petitioner of the extent or the location of the area in respect of which Kotra Gowda had applied for a prospecting licence. The exact extent and the location of the area for which Kotra Gowda had applied for a prospecting licence, could only be determined with reference to the sketch annexed to his application for the prospecting licence. It was not a copy of that sketch that was served on the petitioner. The possibility of an error, such as has been explained by Mr. Government Pleader, cannot be excluded altogether from a rough and ready sketch like Exhibit F-1. It was also explained to us by Mr. Government Pleader with reference to Exhibit R-10, which

is the sketch which had been annexed by Kotra Gowda to his application for a prospecting licence, that the area of 80 acres for which he had made that application, lay, really to the south-west of the 200 acres in respect of which the mining lease had been granted to the petitioner. It was stated by Mr. Government Pleader and by Mr. Ullal, that the dispute between these grantees of prospecting licences and the petitioner, is due to the petitioner having shifted his operations to areas beyond the limits of the 200 acres in respect of which he has been granted the mining lease. We do not think that it is either necessary or desirable for us to make any pronouncement in respect of this alleged shifting or encroachment by the petitioner. We are told that there is a civil suit pending between the petitioner and these three prospecting licence holders, in which the petitioner has sought for a permanent injunction against them. Therefore, we do not wish to state anything about the merits of the question as to whether the petitioner has shifted beyond the limits of the 200 acres in respect of which a mining lease had been granted to him. All that is necessary for the present purpose, is merely to point out that the area and the location of the plot in respect of which Kotra Gowda had applied for a prospecting licence, as shown in Exhibit R10, do not fully accord with what has been shown as the disputed area in Exhibit F-1. Apart from the information which the petitioner derived from what is shown in Exhibit F-1, there is no material placed by him to show that the 13 acres in respect of which a prospecting licence in favour of Kotra Gowda had been ordered under Exhibit P, are not included in the area for which he had made his application for a prospecting licence. This contention of the petitioner, which is based on an inexact representation in Exhibit F-1, must be rejected.

In rejecting the petitioner's application as per Exhibit A, for the issue of a mining lease in his favour in respect of 10 acres of land, the Government relied on an order dated 23-8-1961. In Exhibit C it is stated clearly that the said application was rejected in accordance with the said Government Order. That Government Order is Exhibit D and is as follows:

"Subject: Reservation of areas of State exploitation and release of areas for private section. Government of Mysore.(Commerce and Industries Department) Government Order No. CI 120 MML 59, Bangalore, dated the 23rd August 1961 Bhadrapada 1, S.E. 1883.

Reference:

Government Order No. CI 120 MML 59 dated 22nd June 61.

Preamble: In the Government order read above, it was ordered among others, that no priority need be given to the previous applicants whose application have already been rejected under the Policy decision of 31-12-1957.

ORDER

This question was once again considered by Government and it was felt that this procedure would cause hardship to the mining public as this would deprive the

prior applicants of a chance of getting leases.

After considering all aspects of the case, it is directed that all pending applications as on the date of this Government order be rejected. Fresh applications will be invited by the Director of mines and geology for the areas, with an indication that applicants are free to apply for mining leases/prospecting licences for the areas not reserved for state exploitation, the applicants being asked to mention in their applications particulars of their previous applications which had been rejected by the State Government under the policy decision of 31-12-1957 in order that their prior claims on areas could also be duly considered. The Director is further requested to prescribe a time-limit of 2 months for receipt of applications for prospecting and mining leases in those areas. The Director is further requested to reject all the applications pending as on the date with fresh applications on the merits of each case.

By order and in the name of Government of Mysore.

Sd/- B. Lakshmana Rao, Under-Secretary to Government, Commerce and Industries Department."

Subsequent to the issue of Exhibit C, a third person filed a Writ Petition on 4-9-1961 challenging the validity of the rejection, (under the authority of this Government Order), of all the applications which had been made by him for the issue of prospecting incenses to him. That was in W.P. No.1004/1961 (Mys), which was filed on 4-9-1961 and was disposed of on 3-1-1962. An order in the following terms, was made by the court:

"In the impugned notification No. CI 120 MML 59 dated 23rd August 1961, the following sentence (the first) in the second paragraph of the order, viz., "After considering all aspects of the case, it is directed that all the pending applications as on the date of this government order be rejected" shall stand deleted, and in the following sentence (the last) in the said paragraph; viz., "the director is further requested to reject all the applications pending on the date of this order and to deal with "fresh" applications on the merits of each case" the words underlined (here in " ")shall stand deleted.

We order accordingly."

In compliance with that order of the court, the Government effect by its Government Order as per Exhibit R. 3 published in the Gazette dated 1-3-1962, the modification in Ex. D, as directed by the Court. In consequence of the modification, the direction in Exhibit D to the effect that all applications pending as on the date of Exhibit D be rejected stood abrogated. It should be noted that after the publication of Exhibit R. 3, the petitioner did not take any steps for getting his application Exhibit A treated as if it had continued and had not been validly rejected. Instead, he contended himself with merely making another alienation as per Exhibit G. The argument of Mr. Venugopalachari is that what is important is not what the petitioner did in respect of his application Exhibit a, but

the fact that the three applications for prospecting licenses which had been made by the three aforesaid persons had not been rejected just as Exhibit A had been. It was explained by Mr. Government Pleader that there were some thousands of applications pending at the time when the Government Order as per Exhibit D was passed and that after the Government had commenced to reject the applications in accordance with the directions in Exhibit D, the writ petition in No. 1004/61 was filed and that, therefore, the Government did not take further action thereafter, until the disposal of that writ petition. It is explained that after directions were given by the Court in regard to the modification of Exhibit D, there did not remain any question of rejecting pending applications. It is explained by him that the non-rejection of the pending applications of these three persons for prospecting licenses, after the order as per Exhibit D was made, was not due to any ulterior motives or any desire to show favour to the said three persons. We do not find any good reason to reject this explanation.

It was nextly contended by Mr. Venugopalachari that whether the Government had factually rejected those applications or not, they must be deemed to have been rejected as soon as the Government Order as per Exhibit D was made. This contention cannot be accepted, for two reasons; Firstly Exhibit D, (as it stood prior to the modification effected by Exhibit R-3) does not say that all pending applications are deemed to have been rejected. On the other hand, the direction given is that all pending applications be rejected. On the other hand, the direction given is that all pending applications be rejected. Therefore, it is really a direction given to the authorities to reject the pending applications. If, for some reason, these authorities have not factually rejected some of such applications, it does not follow that they must be deemed to have been rejected. Such applications which have not been factually rejected, will still continue (unless under some other legal provision they are deemed to have been rejected after the expiry of some prescribed period).

Secondly, the above contention overlooks the effect of the modification as per Ex. R. 3. The competence accruing to the concerned authorities from Exhibit D in the matter of rejecting pending applications, is taken away by the modification as per Ex. R. 3. Therefore, such of those applications as had not already been rejected by the time Ex. R. 3 was passed, cannot be thereafter rejected on the authority of Exhibit D. In these circumstances, we cannot agree with Mr. Venugopalachari's contention that the three applications for prospecting licenses which had been made by the aforesaid three persons and had been pending on the date of Exhibit D, must be deemed to have been rejected on that date.

It was nextly sought to be contended on behalf of the petitioner that those three applications had to be rejected according to the terms of Ex. R. 4, the Government Order regarding the policy decision dated 31-12-1957. We have carefully gone through the contents of Ex. R. 4 and we do not find any authority for the proposition that under the terms of Ex. R. 4, pending applications had to be rejected. We do not find any such direction or order to that effect in Ex. R. 4.

There is also one other aspect of the matter, which should be pointed out, proceeding on the basis that the rejection of the petitioner's application as per Exhibit A was not warranted in view of the modification that was effected by Exhibit R. 3, we do not see how the position of the petitioner would have been better. The date of Exhibit A is 23-5-1957 and the application of respondent No. 3 in W.P. 988/64 and the respondent No. 3 in W.P. 989/64, were both made in the year 1958. It seems to us that by virtue of the provisions of sub-section (2) of section 11 of the Act, these three applicants for the issue of prospecting licences would, by reason of their applications being earlier, be entitled to priority, in preference to the claim of the petitioner who was the latter applicant. It is true that the applications of the said three persons were for the issue of prospecting licenses, while the application of the petitioner was for the issue of mining lease. Sub-section (1) of section 11 provides that where a prospecting licence has been granted in respect of any land, the licence shall have a preferential right for obtaining a mining lease in respect of that land over any other person. Sub-section (2) has been made subject to the provisions of sub-section (1). Having regard to the preference that accrues under sub-section (1) to the grantee of a prospecting license and bearing in mind the fact that sub-section (1) and when the language of sub-section (2) is understood in that context, it seems to us that the said three applicants for prospecting licenses would be entitled to preference over the claim of the petitioner whose earliest application for a mining lease was made more than two years after the said three persons had applied for prospecting licenses. The preference that accrues to the said three persons by virtue of the provisions of the Act, places them in a category different from that of the petitioner.

One other argument advanced by Sri Venugopalachari in this connection was, that though the three applications for prospecting licenses had been filed as long back as in the years 1956-57, they had been kept pending until November 1963 when the approval of the Central Government was obtained for disposing of the said applications, even though the prescribed period of nine months had expired long before. It was explained to us by Mr. Government Pleader, that there was quite a number of applications of this kind which had to be dealt with by the Government and that the matter could not be dealt with earlier on account of the disputes between Kotra Gowda and the petitioner in connection with which the order as per Ex.F.1 had to be made and in consequence of which, Writ Petition No.117 of 1961 came to be filed by the Petitioner. It was further explained that the said three applications could not be dealt with during the pendency of that Writ Petition and that thereafter a survey had to be conducted in accordance with the order made in that Writ Petition. He also explained to us, from the records with him, that the survey was completed only in March 1963 and that thereafter a recommendation was made to the Central Government in September 1963 as per Ex. R. 1 setting out therein the reasons as to why these applications could not be disposed of earlier and seeking the approval of the Central Government for the disposal of these applications even though the

prescribed period had expired. It was thereafter, that the Central Govt. accorded its approval as per Ex. R. 2 dated 29h November 63 and directed that the said three applications be disposed of not later than 31-3-1964. Having regard to these circumstances which have been brought to our notice by Mr. Government Pleader, we do not think that there is any good reason to suspect the bona fides of any of the authorities or the State Government merely because there has been some delay in the disposal of these three applications.

A faint attempt was made to express a doubt as to whether the Central Government could have given the direction as contained in paragraph 2 of Exhibit R. 2, when the State Government to exercise its power under S. 30 of the Act. This contention cannot be upheld for the following reasons: Section 30 enables the Central Government to exercise the revisional powers, even of its own motion. The statutory consequence of the failure on the part of the State Government to dispose of such applications within the period of nine months specified in Rule 11(1) is, that the application is deemed to have been refused. The revisional power of the Central Government u/s 30, is exercisable even in respect of such applications which are deemed to have been refused under Sub-rule (1) of Rule 11. Such being the scheme of the rules and the ambit of the revisional power of the Central Government u/s 30, it was within the competence of the Central Government u/s 30 of the Act, even if the State Government had not specified prayed for a direction or an order u/s 30. Therefore, this contention also fails.

For the reasons above stated, we are satisfied that there is no substance in the contention advanced on behalf of the petitioner that there has been a discriminatory treatment resulting in prejudice to the petitioner and that therefore Art. 14 has been violated.

(4) In view of the conclusions above reached by us, the petitioner is liable to fail. There is one other ground, by reason of which also, the petitioner cannot succeed. It should be stated that this ground has not been specifically taken up by the respondents in their counter-affidavit. But, as it is a matter which is necessary to be consider for the purpose of deciding whether the jurisdiction under article 226 should be exercised in a case like this, we questioned Mr. Venugopala Chari about it and we have heard the argument s of the learned Advocates on this point, i.e., on the question as to whether the petitioner did have any subsisting legal right on the date on which he approached this court to invoke the jurisdiction under Art. 226. This writ petition was filed on 4-6-1964. The application as per Exhibit E was filed by the petitioner on 23-2-1962 and his application as per Exhibit G was made on 17-1-1963. Being applications for the grant of mining lease, the Rule that would be applicable for the disposal of the same, would be Rule. 24. Sub-Rule (1) of Rule 24 requires that an application for the grant of a mining lease shall be disposed of within nine months from the date of its receipt; and sub-rule (3) states that if any application is not disposed of within the period specified in sub-rule (1) or Sub-rule (2) it shall be deemed to

have been refused. Exhibit E-1 shows Exhibit E had been received by the Government on 28-2-1962. Therefore, the period of nine months in respect of that application expired on 19/20-10-1963. The only right which the petitioner thereafter had, u/s 30 read with Rule 54, for revision in respect of the refusal of his two applications. This, the petitioner had to do within two months from the aforesaid respective dates. But the petitioner did not prefer any such revision petition to the Central Government under the proviso to Rule 54(1) was satisfied that the applicant had sufficient cause for not making the revision application within time. The position is the same in regard to the Notification as per Exhibit P. That Notification under which the grant of prospecting licenses to the aforesaid three persons was Ordered, was published in the Gazette dated 26-12-1963. The petitioner, who feels aggrieved by the grant of the said prospecting licenses, should have made an application to the Central Government for the exercise of their revisional jurisdiction under S. 30 read together with Rule 54. This he had to do within a period of two months from 26-12-1963 but, he did not do. It is thus clear that on the date when he filed the present Writ Petition (i.e. on 4-6-1964), the petitioner did not have any legal right subsisting in him which the court can consider as being sufficient for invoking its jurisdiction under Art. 226. Mr. Venugopal Chari sought to urge that the existence of a remedy like that of revision available under S. 30 of the Act, would not have the effect of barring the jurisdiction of this Court under Article 226 of the Constitution. There cannot be any doubt, that the existence of an alternative remedy is not by itself, a bar to the exercise of the writ jurisdiction. But, that is entirely different from saying that an aggrieved person may at his own will, by-pass a remedy specifically provided by the statute and invoke the writ jurisdiction of the High Court. The petitioner has not explained in his affidavit, as to why he chose not to avail himself of the remedy which has been imposed on an aggrieved person before he could avail himself of such a remedy provided by statute; like the requirement of a deposit of a heavy amount, before the remedy by way of revision or appeal could be availed of. In this connection, Mr. Ullal drew our attention to the observations made by the Supreme Court in Shivji Nathubhai Vs. Union of India (UOI) and Others, and Vrajlal Manilal and Co. Vs. Union of India (UOI) and Another, to the effect that in the exercise of this revisional jurisdiction the Central Government has to give a fair hearing. The petitioner has not established that there was no adequate remedy provided under the Act and the Rules.

The position is as stated by the Supreme Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, :

"We see considerable force in the argument of the learned Solicitor General. We must, however, point out that the Rule that the party who applies for the issue of a high prerogative should, before he approaches the court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but that it rather a Rule which courts have laid down for the exercise of their discretion."

Thereafter the Supreme Court referred to what Venkatarama Ayyar, J. speaking for the Bench had stated in Union of India (UOI) Vs. T.R. Varma, , which is as follows:

"It is well settled that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a Writ; but, as observed by this Court in Rashid Ahmed Vs. The Municipal Board, Kairana, .The existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs." Vide also K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., . And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226 unless there are good grounds therefor." Again, in another decision reported in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, the Court has stated as follows in paragraph 3 at page 611.

"In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper resort to that machinery and to invoke the jurisdiction of the High Court under Art. 226 of the Constitution when he had adequate remedy open to him by way of an appeal to the tribunal."

The petitioner, not having satisfied us either that the remedy provided under Statute is inadequate or that there is any other good reason for his by-passing the same, would not be entitled to invoke the jurisdiction under Art. 226. As already stated above, the petitioner has failed to establish his contention that Art. 14 has been violated, he has not established that under the provisions of the Act and the Rules there remained to him any right in respect of which he could properly invoke the jurisdiction of this court under Art. 226. The result is that on the date on which he filed the writ petition, the petitioner did not have any subsisting legal right. In State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, it has been stated at paragraph 8:

"Under Art. 226 of the Constitution the jurisdiction Ordinance the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of the fundamental rights and in that sense a party who invokes the special jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the Article clearly indicates that before a writ or an appropriate Order can be issued in favour of a party, it must be established that the party has a right and the said right is illegality invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226."

(5) It has also been rightly contended by Mr. Government Pleader that the

Central Government not having been made a party to these writ petitions, the correctness or otherwise of the direction given by them in Exhibit R-2, in the exercise of their power under S. 30, cannot be gone into. It was in pursuance of that direction, that the State Government proceeded to consider the three applications for prospecting licenses and it was in consequence of such consideration that the Notification as per Exhibit P was issued. If the competence of the Central Government to issue such a direction cannot.....be questioned in their absence and if the State Government to act in accordance with the direction, then, the petitioner will not be entitled to contend that those applications should not have been considered by the State Government.

(6) The petitioner has asked for the issue of a writ of mandamus. From what has been stated above, it is clear that he would not be entitled to this relief. In addition, it was admitted in the course of the arguments, that the necessary prior demand had not been made and that therefore the requirement of a prior demand remains unsatisfied in the resent case.

(7) In the result, these three writ petitions are dismissed with costs. In each writ petition, the petitioner will pay two sets of costs, one set will be to the respondents 1 and 2 and the other to respondent-3. For each set of costs in each case, the advocate's fee shall be Rs. 200.

(8) Writ petitions dismissed.