
(2003) 01 AP CK 0110

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2373 of 2002

Lakshmi S.T. Mining and Leasing Labour Contract Co-operative Society Ltd.

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Mineral Concession Rules, 1960 — Rule 26
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 2003 AP 226

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

**Advocate : C.V. Mohan Reddy and M. Chandrasekhar Reddy, for the Appellant;
G.P. for Industries and N. Shobha, for the Respondent**

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—Heard the learned counsel for both the parties. At the request made by the learned counsel for the parties, the writ petition itself is heard and is being disposed of finally.

2. This Writ petition is filed to issue a writ of Mandamus declaring the action of the 1st respondent in directing the 3rd respondent to submit approved mining plan by proposing to grant mining lease for Barytes over an extent of Ac. 110-00 in Sy. Nos. 56. 58 of Pocharam village, Garla Mandal, Khammam District in favour of the 3rd respondent vide Memo No. 14956/M.III-2/2000 dated 18-12-2001 which was addressed to the 3rd respondent alone even before the consideration of the application of the petitioner society for grant of mining lease in respect of the very same area as Illegal, arbitrary and discriminatory and contrary to the procedure specified in Rule 26 of the Mineral Concession Rules, 1960.

3. The petitioner is a society formed for the welfare of the members of the

society by undertaking mining activity, civil contracts etc. The Government of A.P. vide its G.O. Ms. No. 232. Ind. & Com. (M.III) Department, dated 6-4-1973 granted a mining lease in favour of M/s. Expo Chemicals, Kothagudem for Barites over an extent of 110 acres in Sy. No. 57 and 58 of Pocharam Village, Khammam District. Subsequently the lease was terminated on the ground that the lease area fall in Scheduled area where only Tribals should be preferred in granting mining/quarry leases. Thus, the lease granted to Ex-Chemicals came to an end by 6-4-1973.

4. Later, the Government of Andhra Pradesh vide G.O. Ms. No. 406 dated 23-11-1998 declared that an extent of 44,534 hectares comprised in Sy. Nos. 57 and 58 will be available for grant under mining lease after expiry of 30 days from the date of publication of notification in the Gazette. The said notification was published in the A. P. Gazette on 21-1-1999. As there was a mistake in the notification with regard to the name of the Mandal, the Government of Andhra Pradesh issued another notification in G.O. Ms. No. 20 Industries & Commerce department 23-1-1999.

5. As per the notification, the notified area of an extent of 44,534 Hectares (Ac 110-00) in Sy. No. 57 and 58 are available for grant of mining lease in favour of the per sons belonging to Scheduled Tribes. Accordingly the petitioner-society submitted its application on 21-3-1999. The 3rd respondent society submitted its application on 4- 6-1999 i.e. much later to the application submitted by the petitioner-society. As per the notification published in the Gazettee, the application could be made after expiry of 30 days from the date of publication of notification in the Gazettee. As stated earlier, the notification was published on 21-1-1999 and the applications could riot be made with effect from 21-2-1999. Thus, the petitioner-society was the 1st applicant seeking grant of mining lease, pursuant to the notification published in the A.P. Gazettee. The petitioner society has also submitted an application on 18-2-1999 itself seeking grant of mining lease in respect of the very same area. Even the 3rd respondent submitted an application seeking grant of mining lease in respect of this area on 20-2-999. Thus both these applications were Submitted prior to the publication of the notification in the A.P. Gazettee. Hence, both these applications should be rejected on the simple ground that they are premature.

6. It is further stated that the Assistant Director of Mines and Geology, Khammam vide his letter No. 904 M 99 dated 22-3-1999 has requested them to attend for inspection and survey of the area on 30-3-1999, keeping in view the priority and during the inspection and survey of the applied area, their authorized representative has attended the same and shown the required area on the ground. Further, he has given the consent clearly specifying that the petitioner society is agreeable for obtaining a mining lease in respect of the land in an extent of Ac. 110.00. Accordingly, the Assistant Director of Mines and Geology, Khammam has submitted the proposals to the 2nd respondent herein, duly recommending their application for grant of mining lease.

7. It is further stated that G.O.Ms. No. 181 Industries and Commerce Department dated 14-6-1998 clearly stipulates that the mining lease applications should be disposed of within 45 days from the date of receipt of the first application. Had the 1st respondent considered the application submitted by the petitioner society within 45 days from the date of receipt of the application, the petitioner society would have got mining lease as no other application was subsisting at that point of time seeking grant of mining lease in respect of the area in question.

8. The respondents-officials have filed a counter affidavit stating that the writ petitioner has alternative remedy of revision u/s 30 of Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 54 of the Mineral Concession Rules, 1960. It is further stated that the 1st respondent has granted a mining lease for Barytes in favour of M/s. Expo Chemicals, Kothagudem over an extend of 110 acres in Sy. No. 57 and 58 of Pocharam village, Garla Mandal, Khammam District in G.O. Ms. No. 233. Ind. & Com. (M.III) Department dated 6-4-1973. The said applicant has filed application for renewal but the same was rejected in Memo. No. 28242 M.III-2/97-1, dated 13-12-1997 on the ground that the area falls in notified Tribal land and as per the A.P. Land Transfer Regulation Act, such leases in Notified tribal areas have to be granted only to the persons belonging to Schedule Tribes. The said area has been notified under Rule 59 of the Mineral Concession Rules, 1960 for re-grant for the members belonging to the Scheduled Tribes in G.O. Ms. No. 406, Ind. & Com. (M.III) Department dated 23-11-1998. The said notification was published in A.P. Gazette on 21-1-1999. As there was a mistake in the notification with regard to the name of the Mandal, same was rectified in G.O.Ms. No. 20 dated 23-1-1999. According to the said G.O. applications can be entertained after a lapse of 30 days from the date of notification and in the instant case the applications can be entertained with effect from 21-2-1999.

9. It is further submitted in the counter affidavit that the Assistant Director of Mines and Geology is not the authority to take a decision as to whose application has to be preferred. He has to process all the applications and submit proposals and that mere calling for inspections by the Assistant Director of Mines and Geology does not entitle the petitioner to get the area. According to G.O.Ms. No. 181, dated 14-6-1998 certain time stipulations have been laid down as guidelines for disposal of the applications at various levels. This is only to expedite the disposal of applications. The respondents further stated that Section 11 of the Act has been amended with effect from 20-12-1999 as per the said amended provision of the Section under proviso one of Section 11(2) all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of shall be deemed to have been received on the same day for the purpose of assigning priority. Therefore, by applying this proviso the applications filed by the petitioner as well as the 3rd respondent were, considered as if they were

received on the first day of the" notification. It is also stated in the counter affidavit that when once the applications filed on 18-2-1999 and 20-2-1999 are considered the applications of petitioners filed on 21-3-1999 and of the 3rd respondent filed on 4-6-1999 serves no purpose since both are for same area.

10. The 3rd respondent has also filed a counter affidavit inter alia stating that "the writ petitioner has submitted the application on 18-2-1999 for over an extent of Ac. 788.00 cents. and the 3rd respondent society had submitted an application on 20-2- 1999 calculating it as 30th days this application is not premature as the application received prior to 30 days of publication of notification and not disposed of shall be deemed to have been received on the day the notification has come into effect i.e. 22- 1-1999 as per the amendment provision of Section 11 of the Act, which was amended by Act 38 of 1999 with effect from 20-12- 1999 under proviso of Section 11(2) of the Act".

11. Sri C. V. Mohan Reddy, learned counsel for the petitioner contended that notwithstanding the fact of petitioner having alternative remedy of revision before the revisionary authority, the 1st respondent while issuing a show cause notice to the petitioner, has already prejudged the Issue and proposed to grant mining lease in favour of the 3rd respondent and on this ground itself the impugned order is liable to be quashed. He further contended that a show cause notice dated 18-12-2001 was issued to the petitioner as to why action proposed in Para 2 of the memo shall not be taken for rejecting the application of the petitioner dated 18-12-1999 on the ground that the members of the 3rd respondent are locals, whereas the members of the petitioner are the natives of Cuddapah, and that both the grounds are not tenable. Learned counsel has drawn my attention to Rule 26 of the Mineral Concession Rules 1960, a plain reading of the above rule clearly contemplates the procedure and safeguards that an opportunity of being heard has to be provided to the petitioner. He further contended that the respondent-authority in haste, formed its opinion proposing to grant mining lease in favour of the 3rd respondent and directed him to submit mining plan, and at the same time without affording the personal hearing, issued show cause notice, without waiting even for 15 days to consider his reply, and that the decision suffers from violation of principles of natural justice and opportunity of hearing was not provided to the petitioner as envisaged u/s 26 of the Act. Learned counsel for the petitioner has drawn my attention to the judgment of the Supreme Court reported in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, wherein the Apex Court considered its earlier Judgment reported in Union of India (UOI) Vs. T.R. Varma, and contended that in the present case existence of alternative remedy is not a bar to entertain the writ petition.

12. The Supreme Court in Venkateswaran's case (supra) has held as follows :

(8) The only point, therefore, requiring to be considered, is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his

grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners. In the present case, he urged, the High Court in appeal had expressly dissented from the reasoning of the learned Single Judge as regards the lack of jurisdiction of the Customs Officers to adjudicate regarding the item under which the article imported fell and the duty leviable thereon. Nor was there any complaint in this case that the order had been passed without an opportunity to the importer to be heard, so as to be in violation of the principles of natural justice. The learned Solicitor-General questioned the correctness of the reasoning of the learned chief justice in condoning the conduct of the respondent in not moving the government in revision by taking into account the time that had elapsed between the date of the impugned order and that on which the appeal was heard. The submission was that if this were a proper test, the rule as to a petitioner under Article 226 having to exhaust his remedies before he approached the Court would be practically a dead letter because in most cases by the date the petition comes on for hearing, the time for appealing or for applying in revision to the departmental authorities would have lapsed.

(9) 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 writ 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 is rather a rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases: In *Union of India v. T.R. Varma* (i), Venkatarama Ayyar, J. speaking for the Court said : "If it is well-settled that when an alternative and equally efficacious remedy is open to a 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 Article 226, unless there are good grounds therefore. There is no difference between the above and the formulation by Das, C.J., in *The State of Uttar Pradesh v. Mohammad Nooh*, AIR 1958 SC 86, where he observed :It must be borne in mind that

there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite, of the fact that the aggrieved party had other adequate legal remedies. After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned chief justice added : It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari. In the result this Court held that the existence of other legal remedies was not per se a bar to the issue Of a writ of certiorari and that the court was not bound to relegate the petitioner to the other legal remedies available to him.

(10) The passages in the judgments of this Court we have extracted would indicate (i) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

13. Learned Government Pleader appearing for the official respondents contended that the applications of the writ petitioner as well as the 3rd respondent were received on 18-2-1999 and 20-2-1999 i.e. prior to the date from which applications have to be entertained and the same have to be treated as received on the first day of the date on which the applications are to be received as per proviso 1 of Section 11(2) of the Act, and therefore no interference is warranted in this matter. Smt. N. Shobha, learned counsel for the 3rd respondent contended that government Considering all the factors came to the conclusion that the 3rd respondent society is a local society whereas the petitioner-society is from Cuddapah district and that the 3rd respondent society

is having previous experience in mining and hence the decision of the government cannot be found fault with.

14. Be that as it may, without going into further merits of the case, in my view, the impugned, orders suffers from violation of principles of natural Justice as authority prejudged the whole issue and formed an opinion without even waiting for any reply from the petitioner. The authority on the very same day i.e. on 18-12-2001 directed the petitioner "to show cause within 15 days from the date of receipt of the memo, as to why action as proposed in para 2 above shall not be taken, failing which it will be construed that they have no explanation/representation on the action proposed and further action will be taken on the basis of the material available with the Government". On the very same day by order dated 18-12-2001 in memo No. 14956/M.III-2/2002 issued the proceedings stating that the Director of Mines and Geology has submitted proposals recommending to reject the mining lease applications of other applicants on the ground that the applied area is overlapping with that of earlier application of M/s. Pocharam Tribal Labour Contract Co-operative Society Limited-3rd respondent herein. In the circumstances of the case, without expressing any opinion on the merits of the case, I hereby set aside impugned order by remitting the matter back to the Government to re-consider the matter afresh after affording an opportunity to the petitioner and consider his representation and take a decision in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that this Court has not expressed any opinion on the merits or demerits of the petitioners or other applicants and the respondents-authorities shall proceed with the matter strictly as per law.

15. Subject to above directions, the writ petition stand allowed. No costs.